

EXHIBIT E

AMERICAN ARBITRATION ASSOCIATION
CASE NO. 01-18-0000-6169

SUSANA LUCIO,

Claimant,

vs.

PARTS AUTHORITY, LLC, et al.,

Respondent.

January 15, 2019
9:57 a.m.

ARBITRATION taken in the above titled
actions held at the Offices of Abrams Fensterman,
3 Dakota Drive, Suite 300, New Hyde Park, New York,
before Terri Fudens, a Certified Shorthand Reporter
and Notary Public within and for the State of New
York.

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1 ARBITRATION

JANUARY 15, 2019

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6		Honorable Robert M. Levy,
7		United States Magistrate Judge
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ARBITRATION

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1 ARBITRATOR MASUCCI: Good morning
2 everyone. My name is Deborah Masucci. I'm the
3 arbitrator appointed to hear this matter. The
4 matter is Susana Lucio versus Parts Authority,
5 LLC.

6 For the record, I want to go around the
7 room and have everybody introduce themselves for
8 the court reporter. I also would like to remind
9 everybody that when they speak, you speak
10 clearly and not rapidly so that the court
11 reporter can take down all of the words that
12 you're saying.

13 SUSANA LUCIO: Susana Lucio.

14 MR. POTASHNICK: Mark Potashnick,
15 co-counsel for the claimant.

16 MR. FREI-PEARSON: Good morning.
17 Jeremiah Frei-Pearson, co-counsel for the
18 claimant. J-E-R-E-M-I-A-H. Last name is
19 F-R-E-I dash P-E-A-R-S-O-N.

20 MR. WHITE: Good morning. Andrew
21 White, co-counsel for the claimant.

22 MS. BULLER: Good morning. Alexandra
23 Buller. I'm Parts Authority's in-house counsel.

24 MR. ROSENTHAL: Yaron Rosenthal. I'm
25 one of the members of Parts Authority LLC.

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1 MS. STILLER: Sharon Stiller, attorney
2 with the law firm Abrams Fensterman, counsel for
3 Parts Authority.

4 MR. MARKS: Andrew Marks, counsel for
5 Parts Authority.

6 ARBITRATOR MASUCCI: I just want to
7 handle some housekeeping issues so that we know
8 what to anticipate.

9 The first thing is that if you have
10 cell phones, please put them on silent so that
11 no one is disturbed.

12 I would like to know how long you think
13 that the hearing will go today and what
14 witnesses you will offer today.

15 MR. FREI-PEARSON: So claimants have
16 three witnesses today, the first one being
17 Miss Lucio. I think Mark is doing her directly.

18 What do you think, about a half hour?

19 MR. POTASHNICK: An hour.

20 MR. FREI-PEARSON: So an hour for the
21 direct.

22 The second witness would be Ron
23 Oliveria, but we're going to have Mr. Oliveria
24 go third because he is in class right now.
25 Mr. Oliveria's direct testimony should be about

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1 25 minutes.

2 And who would be our third witness, but
3 who is our second witness, is Michael Earner.

4 About how long do you think
5 Mr. Earner's testimony will go?

6 MR. POTASHNICK: 45 minutes or so.

7 MR. FREI-PEARSON: We also have an
8 opening statement if you would like to hear it.

9 ARBITRATOR MASUCCI: Yes.

10 So that will be the day, because I
11 understand that Mr. Oliveria won't be here until
12 4 o'clock.

13 MR. FREI-PEARSON: We're happy to go
14 out of order. We would anticipate that around
15 1:30 or 2:00 we would be done with our second
16 witness. And so if they would like to call any
17 of their witnesses during that interim just to
18 be more efficient, we're happy to do that.

19 ARBITRATOR MASUCCI: Miss Stiller.

20 MS. STILLER: Mr. Marks is going to be
21 handling the hearing, and I will let him speak
22 to the order of witnesses.

23 I just have a question so everybody can
24 deal with their schedule about whether the court
25 will be breaking for lunch.

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1 MR. MARKS: So respondents have four
2 potential witnesses. Of course we're not sure
3 of what we intend to do at the time.

4 We have a Parts Authority general
5 manager who is here, and we might be able to
6 take his testimony out of order today.

7 ARBITRATOR MASUCCI: Okay.

8 MR. MARKS: We may be calling
9 Mr. Rosenthal. I'm not sure. We have Paul
10 Spicker, who is general counsel and human
11 resources director of Diligent, who is in
12 Houston, Texas.

13 And we have Fred Rosenau, who is the
14 operations manager for Parts Authority, and he
15 is in Atlanta.

16 MS. STILLER: For Diligent?

17 MR. MARKS: Sorry. For Diligent.

18 And we -- I don't think we can call him
19 today. That's why I didn't think we would get
20 it done today.

21 ARBITRATOR MASUCCI: Okay. I did read
22 the E-mails. I just wanted some clarification.
23 I figured that we would have to come back
24 tomorrow at least for one. But you're certain
25 that you're going to be calling him or --

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1 MR. MARKS: I'm certain we'll call him.

2 ARBITRATOR MASUCCI: All right.

3 As I said in my E-mail, I'm willing to
4 stay as late as necessary today or tomorrow. My
5 schedule is yours. The only thing is in the
6 morning coming here, I'm prey to the Long Island
7 Expressway. I live in Brooklyn. I did leave at
8 8 o'clock this morning. So you can see I just
9 got here 10 minutes beforehand.

10 MR. MARKS: If you left at 9:00, you'd
11 probably get here at the same time.

12 ARBITRATOR MASUCCI: I know.

13 Miss Stiller, to answer your question,
14 yes, we will have a lunch break. Is there a
15 place for people to eat close by?

16 MS. STILLER: I don't think so, but I
17 think we can arrange for people to order out.

18 Do you have any menus? Because if you
19 do, probably the easiest thing to do might be to
20 circulate some menus, order out, and then we've
21 got separate rooms that everybody can be in.

22 ARBITRATOR MASUCCI: Okay.

23 As far as going forward, what I
24 anticipate is that each side will have an
25 opening statement, and then you'll present your

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1 first witness, Miss Lucio.

2 After direct and cross, we will take a
3 five or 10-minute break depending on what is
4 needed by everyone so that we can pace the
5 testimony today and so that we don't feel that
6 we're rushed, and you can take a breather.

7 Any questions?

8 MS. STILLER: It may be helpful to take
9 more breaks than usual just because of the
10 facilities being outside.

11 ARBITRATOR MASUCCI: You mean timing
12 for the breaks?

13 MS. STILLER: It might be helpful, for
14 example, to take a break after the witness'
15 direct depending on how long it is, in case
16 anybody needs to use the facilities.

17 ARBITRATOR MASUCCI: Yes. Definitely.

18 MS. STILLER: I know that that's not
19 ideal, but I wish we had bathrooms inside.

20 ARBITRATOR MASUCCI: That's okay.
21 There's no problem.

22 MR. MARKS: We had a minor kerfuffle
23 about the deposition transcript. I think by AAA
24 rules, the party who desires to have a
25 transcript should pay for the transcript.

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1 MS. STILLER: Arbitration transcript.

2 ARBITRATOR MASUCCI: You said
3 deposition.

4 MR. MARKS: The party who wishes to
5 have a transcript of the arbitration is the
6 party who pays for it. That's the rule.

7 As the other side pointed out, I think
8 in your order number 1 you said if you want to
9 have a transcript, you should split the cost. I
10 don't recall how that order came to be, but if
11 that is your order, then we will split the fee.

12 ARBITRATOR MASUCCI: Why don't we do
13 that.

14 Is there any other --

15 MR. MARKS: Not at this moment.

16 MR. FREI-PEARSON: Not from claimant?

17 ARBITRATOR MASUCCI: So we will
18 proceed.

19 MR. FREI-PEARSON: Good morning. What
20 brings us to this arbitration are the rules that
21 protect all American employees. The Fair Labor
22 Standards Act, or FLSA, requires that all
23 employees be paid overtime and the minimum wage
24 including reimbursement for expenses they incur
25 in their job duties.

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1 The FLSA defines the terms employee and
2 employer very broadly so as to protect workers,
3 particularly vulnerable workers without special
4 skills. At the same time, the FLSA exempts
5 independent contractors from its coverage so as
6 to allow private independent businesses to
7 interact with each other without being burdened
8 by the government's wage regulations.

9 We're here today because Parts
10 Authority and Diligent misclassified Susana
11 Lucio and thousands of other low wage delivery
12 drivers as independent contractors in order to
13 increase their profits by paying the drivers far
14 less than the FLSA requires.

15 At this arbitration, claimant will
16 prove three things. First, she'll prove that
17 she was an employee, not an independent
18 contractor. She will also prove that Parts
19 Authority was her employer. Importantly under
20 the FLSA, a worker can have multiple employers
21 and can recover against any one of the
22 employers. Finally, claimant will prove her
23 damages.

24 Before Miss Lucio started working for
25 Parts Authority, Diligent made Miss Lucio sign a

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1 contract stating that she was an independent
2 contractor. But the law is clear that when the
3 words on the page are contrary to the facts on
4 the ground, it is the facts on the ground that
5 control, not the contract. Here, the real facts
6 conclusively show that Miss Lucio was not an
7 independent contractor.

8 The courts used the economic reality
9 test from US v. Silk to determine whether or not
10 a worker truly is an independent contractor.

11 Under this test, the ultimate question
12 is whether as a matter of economic reality,
13 workers depend on someone else's business for
14 the opportunity to render service or whether
15 they are in business for themselves.

16 The courts typically consider five
17 factors would apply to the Economic Reality
18 Test. They're listed on the PowerPoint.

19 ARBITRATOR MASUCCI: And they were in
20 the opening statement in your brief.

21 MR. FREI-PEARSON: Exactly.

22 Each of those factors favors a finding
23 that Miss Lucio was, in fact, an employee and
24 not an independent contractor. First,
25 significant control is exercised over

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1 Miss Lucio. Parts Authority controlled what she
2 did, which was to deliver auto parts to Parts
3 Authority customers.

4 Every day, like any common employee,
5 and like Parts Authority's W2 drivers,
6 Miss Lucio went to her job site and did all the
7 duties assigned to her by her boss, the Parts
8 Authority manager.

9 Parts Authority set Miss Lucio's hours.
10 Parts Authority approved Miss Lucio's breaks and
11 sometimes prevented her from taking breaks.
12 Parts Authority dictated the deliveries
13 Miss Lucio made, the order of those deliveries,
14 and the amount of time those deliveries
15 contained.

16 Parts Authority closely supervised
17 Miss Lucio's work calling her throughout the day
18 and requiring her to call Parts Authority.
19 Parts Authority trained Miss Lucio. Parts
20 Authority required Miss Lucio to wear a Diligent
21 uniform.

22 Miss Lucio's rate of pay was set by
23 Diligent acting as Parts Authority's agent and
24 guided by Parts Authority's contract with
25 Diligent. Parts Authority prevented Miss Lucio

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1 from earning additional income from Parts
2 Authority's customers.

3 Miss Lucio could not bid for jobs or
4 negotiate her rate of pay. And Miss Lucio had
5 no real ability to hire and manage others,
6 although the contract Miss Lucio signed with
7 Diligent said Miss Lucio could hire a
8 replacement. This was one of many fictions in
9 the contract.

10 In fact, Renan Oliveria, another Parts
11 Authority driver, will testify that the Parts
12 Authority manager explicitly told drivers they
13 couldn't hire replacements. Even if Parts
14 Authority did allow Miss Lucio to hire
15 replacements, which it did not, Miss Lucio could
16 not legally hire a replacement because the low
17 wages she received would have forced her to pay
18 any replacement wages below the minimum required
19 by the FLSA.

20 Moreover, as a low wage earner,
21 Miss Lucio had no practical ability to hire
22 workers. Like nearly all other low wage
23 earners, she lived on her own income and used it
24 to feed her family, not to hire additional
25 people to work subminimum wage jobs for Parts

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1 Authority.

2 So the first factor, the control
3 factor, very clearly favors employee status.
4 The second factor, profit or loss, Miss Lucio
5 had no real opportunity for profit or loss. She
6 earned a flat amount per workday, regardless of
7 how many deliveries she made or how efficiently
8 she drove. Indeed Parts Authority dictated her
9 deliveries and the routes.

10 No amount of hustle, ingenuity or
11 dedication could change what she made. Again,
12 she had no practical ability to hire anyone
13 else, and her work was limited to whatever Parts
14 Authority assigned her to deliver.

15 Miss Lucio could not refuse Parts
16 Authority assignments, and she regularly worked
17 50 to 60 hours a week for Parts Authority which,
18 as a practical matter with family, prevented her
19 from taking on an additional job or additional
20 work.

21 Miss Lucio did not invest in any
22 special equipment providing only her cell phone
23 and automobile, things owned by millions of
24 adults in America. So again, the second factor,
25 profit or loss, strongly favors employee status.

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1 Let's go to the third factor, which is
2 special skills. The only so-called skills
3 required for this job is the ability of an adult
4 to drive from location to location and to check
5 in on itself.

6 The other job duties, such as checking
7 paperwork and checking parts were duties that
8 she was trained to do for Parts Authority and
9 are also within the common ability of most
10 adults. This factor, the Special Hills, factor
11 also strongly militates in favor of employee
12 status.

13 The next factor, the duration of the
14 relationship also favors employee status. Parts
15 Authority claims that Miss Lucio was hired for a
16 finite time, a series of daily contracts.

17 That's just not true. She was hired to deliver
18 parts for Parts Authority six days a week for an
19 indefinite duration, like a common at will
20 employee and like Parts Authority's W2 drivers.

21 She was not free to take days off like
22 Parts Authority claims. In fact, she was
23 repeatedly told she could not take days off.
24 When Miss Lucio said she needed to cut back the
25 day she worked to be with her sick child, she

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1 was told that she must choose between her family
2 and her job. Not her independent business
3 opportunity, her job, and was essentially forced
4 to resign when she still insisted on taking time
5 to be with her daughter.

6 If Miss Lucio could have continued to
7 work the 50 to 60 hours a week at the time Parts
8 Authority needed her, her supposedly finite job
9 would have continued to this day.

10 So the duration of the employment
11 status also favors employee status. The final
12 factor also favors employee status.

13 Miss Lucio's work was an integral part
14 of Parts Authority's business. Parts Authority
15 specifically advertises its fast deliveries to
16 customers, and Mr. Rosenthal himself has
17 admitted that making deliveries is an important
18 part of Parts Authority's job. These deliveries
19 would not have been possible without Miss Lucio
20 and her low wage earnings peers.

21 So again, all of these factors
22 individually favor employee status. And taken
23 together, the economic reality is simply
24 overwhelming. We believe Parts Authority
25 employed Miss Lucio.

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1 Diligent has appeared to sometimes
2 argue that if Miss Lucio was an employee, she
3 was employed by Diligent, not Parts Authority.
4 This argument is unavailing because under the
5 FLSA -- first of all, the facts show that Parts
6 Authority is the one that did the vast majority
7 of the control.

8 Regardless, under the FLSA, any
9 employee is jointly or severally liable to
10 employees for the FLSA violations. Thus, Parts
11 Authority can't shield itself from liability by
12 arguing that diligent is the proper defendant,
13 even if your Honor finds there was one more than
14 one employer.

15 Now Miss Lucio was paid at least
16 \$6,257.04, less than required by the FLSA. Our
17 pre-hearing brief describes the relevant
18 calculations in excruciating detail, and
19 Mr. Earner will go through those calculations
20 again, so I'll spare your Honor all of the
21 details.

22 But one thing worth knowing is Parts
23 Authority simply did not produce all relevant
24 documents. For example, Parts Authority's
25 manager wrote down when Miss Lucio arrived to

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1 work and when she left. Those documents weren't
2 produced for us, so we had to go based on
3 Miss Lucio's records.

4 Similarly we asked Parts Authority to
5 produce all the delivery slips from Miss Lucio.
6 They didn't do that. One of the reasons we know
7 they didn't do that is there's multiple days
8 where, according to the delivery slips that were
9 produced, Miss Lucio just made one or two
10 deliveries. But as Miss Lucio will testify, she
11 never made less than six deliveries.

12 So what we did is we made a series of
13 conservative estimates to account for the gap in
14 the data. For every day where there were less
15 than six deliveries, we assumed a total of six
16 deliveries at the average rate. This
17 necessarily undercounts, because it assumes that
18 every day when we just got one or two slips,
19 there were only six deliveries. Where it's
20 unlikely that every single day there was the
21 lowest amount of deliveries, it also assumes
22 that the days where there were more than six
23 slips produced, Parts Authority produced every
24 slip. There is no reason to believe that's
25 true.

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1 Nonetheless, as we explained in our
2 prehearing brief and as Mr. Earner will testify,
3 we made a series of conservative assumptions in
4 order to calculate Miss Lucio's damages as
5 \$6,257.04. Now Miss Lucio is entitled to
6 \$12,514.08 plus attorneys' fees and costs.

7 At the beginning I talked about the
8 FLSA's rules. One of the FLSA's most important
9 rules is that liquidated damages are mandatory
10 unless the employer pleads and affirmatively
11 proves its good faith and reasonable grounds
12 that were complied, in which case your Honor has
13 discretion as to whether or not to award
14 affirmative damages.

15 Even if they prove that they acted in
16 good faith, your Honor still has discretion to
17 award full liquidated damages because courts
18 have explained that to compensate vulnerable
19 employees and to the term employers, liquidated
20 damages are the norm in FLSA cases.

21 Here the Parts Authority didn't even
22 plead that it acted in good faith, and that
23 makes sense because Parts Authority can't show
24 good faith. They've been sued for this numerous
25 times. Parts Authority used temporary drivers

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1 like Miss Lucio and her peers to make millions
2 of dollars violating the FLSA. This money was
3 made on the backs of Miss Lucio and her low wage
4 earning peers. And they knew this was unlawful.

5 They drafted a contract describing what
6 a true independent contractor relationship would
7 be. That contract was a fiction intended to
8 create legal protection so that they could
9 exploit low wage workers. W2 workers of Parts
10 Authority get paid overtime. They get
11 reimbursed for their driving expenses.

12 Parts Authority made a lot of money by
13 not giving Miss Lucio and her peers the same
14 protection. Her damages are \$12,514.08. She is
15 entitled to every single penny.

16 Thank you for your attention.

17 ARBITRATOR MASUCCI: Thank you.

18 Mr. Marks.

19 MR. MARKS: I don't have a PowerPoint,
20 or an expert witness, or thousands and thousands
21 of documents which we calculated.

22 The reason I don't is because what we
23 do have is the facts. Plaintiffs in their brief
24 and in their opening statement have now told
25 you, oh, Parts Authority drafted a contract.

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1 Parts Authority didn't draft a
2 contract. What they're trying to do is
3 conglomerate two entities. They started that
4 only after they began this case in court
5 claiming they weren't making that statement.
6 They told the court that there is no
7 relationship, we are not pleading any
8 relationship between Diligent and Parts
9 Authority.

10 What we now have is the idea that
11 whatever Diligent did is now attributable to
12 Parts Authority, and somehow they've become a
13 single employer or a joint employer. But I do
14 think what you need to do is listen to the
15 facts.

16 The testimony just doesn't support what
17 we've just heard. Parts Authority did not
18 control Miss Lucio. Parts Authority set out
19 deliveries to make. Miss Lucio came there, she
20 picked up a delivery and she went.

21 We took her deposition and I asked
22 Miss Lucio: Other than telling you that you
23 should do the work taking the delivery, other
24 than directing you at what time to come and
25 giving you a delivery or a pickup, did you

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1 receive any other instruction from Parts
2 Authority? And her answer is no.

3 And why not? Because when she was
4 contracted with Diligent, Diligent told her:
5 I'm contracting you to have this coverage. This
6 coverage is Monday to Friday and Saturday. The
7 coverage starts at 8 and ends at 6, a little bit
8 less on Saturday.

9 That's what Miss Lucio agreed to do.

10 We gave her a document. We had a
11 conversation with her. We told her -- this is
12 Diligent. Diligent told her that you don't have
13 to come. You're an independent contractor.
14 There were days when Miss Lucio didn't come. We
15 told her she could send somebody else. Now if
16 she didn't, that's her choice.

17 But Diligent has many drivers who do
18 have subcontractors, who have multiple routes
19 and do make money off of that by controlling
20 their expenses and doing other things.

21 So this isn't some idea that we got in
22 bed together. Diligent was in business long
23 before it had any relationship with Parts
24 Authority doing exactly the same thing. Parts
25 Authority acquired stores in Georgia, asked

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1 Diligent to supply contractor drivers. That's
2 what Diligent did.

3 That's what Miss Lucio did before she
4 was contracted with Diligent, and that's the
5 same role she had after she contracted with
6 Diligent with another entity, ATS.

7 So she's certainly in the business.
8 She filed a tax return saying she's in the
9 business. And I would only add that while we
10 have this elaborate discussion of regression
11 analysis of the various things, Miss Lucio
12 reported her expenses to the IRS
13 contemporaneously when she did it, not some
14 after done model.

15 She didn't report anywhere near the
16 amount that they're claiming as expenses. And
17 it's not true that an employee under the --
18 inaccurate statement of law that employs under
19 the FLSA are entitled to reimbursement of their
20 expenses. Employees under the FLSA are entitled
21 to reimbursement expenses to the extent that
22 their expenses drive their wages below minimum
23 wage. That didn't happen here.

24 But Miss Lucio is not an employee. I
25 think we need to look at what the FLSA is doing.

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1 Supreme Court recently said that there is no
2 basis to construe exemptions for the FLSA,
3 strictly construe that against the employer.
4 And although courts said it was the broadest
5 definition of employment, it is a definition,
6 and we need to look at what that definition is
7 in Georgia. And I will refer to Georgia's state
8 law which says when you have an agreement, a
9 written agreement, there is a presumption that
10 that individual is an independent contractor.

11 And it is Miss Lucio's burden, not
12 Parts Authority's burden, to prove her status as
13 an employee. It's not our burden to prove she's
14 an independent contractor. Because she already
15 has told us under oath that we didn't exercise
16 control over what she did, we didn't give her
17 any instructions, she cannot possibly meet this
18 burden.

19 I await to hear the facts if they're
20 different than what she testified to at the
21 deposition, but I assume that they wouldn't be,
22 and I assume we will have a judgment in our
23 favor. Thank you.

24 ARBITRATOR MASUCCI: Thank you.

25 Mr. Potashnick.

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1 MR. POTASHNICK: The claimant calls
2 Miss Lucio.

3 ARBITRATOR MASUCCI: Terri will
4 administer an oath to you.

5 S U S A N A L U C I O, a Claimant herein,
6 having been first duly sworn by Terri
7 Fudens, a Notary Public of the State
8 of New York, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. POTASHNICK:

12 Q. Miss Lucio, please state your full name
13 for the record.

14 A. Susana Lucio.

15 Q. What city do you live in?

16 A. I live in Roswell, Georgia.

17 Q. Where are you originally from?

18 A. I'm from Mexico.

19 Q. How far did you get in school?

20 A. I went to the 11th grade.

21 Q. Did you previously work for Parts
22 Authority?

23 A. Yes.

24 Q. When did that job begin?

25 A. I begin that job in May 11, 2015.

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1 Q. When did your job at Parts Authority
2 end?

3 A. It ended October 22, 2015.

4 Q. What kind of business is Parts
5 Authority?

6 A. It's auto parts.

7 Q. What was your position at Parts
8 Authority?

9 A. I was a delivery driver.

10 Q. How did it come about that you began to
11 work for Parts Authority?

12 A. Well, I needed a job, and I called my
13 brother-in-law Renan, and he was telling me that
14 Parts Authority was hiring. My brother-in-law Renan
15 told me --

16 MR. MARKS: I would object to hearsay.

17 MR. POTASHNICK: It's an arbitration.

18 MR. MARKS: Then my objection will be
19 overruled, but I point out that she's testifying
20 to an out-of-court statement, and it's
21 overruled.

22 Thank you.

23 ARBITRATOR MASUCCI: How do you spell
24 your brother-in-law's name?

25 MS. LUCIO: O-L-I-V-E-R-A.

ARBITRATION

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1 ARBITRATOR MASUCCI: And the first
2 name?

3 MS. LUCIO: Renan is R-E-N-A-N.

4 A. He told me that Parts Authority was
5 hiring. So he gave me a phone number, and that's
6 when I called Fred. And he told me that Fred would
7 set me up to go to work for Parts Authority.

8 Q. Who was Fred?

9 A. Fred was the Diligent guy that did the
10 paperwork.

11 ARBITRATOR MASUCCI: Fred was the?

12 MS. LUCIO: The Diligent guy.

13 ARBITRATOR MASUCCI: The Diligent guy?

14 MS. LUCIO: The Diligent guy that gave
15 me the paperwork.

16 Q. Did you meet with Fred?

17 A. Yes, I did.

18 Q. Did he give you paperwork to sign?

19 A. Yes.

20 Q. After you signed the paperwork, what
21 happened?

22 A. Well, he gave me a bunch of papers, and
23 he just laid it down on the desk, and he told me in
24 order to work for Parts Authority, I have to sign
25 those papers. So I signed it.

ARBITRATION

32

1 Q. Did you read the paperwork before you
2 signed it?

3 A. Naturally, because he was rushing me
4 because he say that they needed a delivery driver in
5 the facility, in the warehouse where I used to do the
6 deliveries.

7 Q. Did Fred give you a copy of the
8 paperwork?

9 A. No.

10 Q. Let me turn your attention to Joint
11 Exhibit 7, please.

12 ARBITRATOR MASUCCI: While you're
13 looking for what you're looking for, can I have
14 a stipulation from both sides that all of
15 these -- the joint exhibits should be accepted
16 as exhibits?

17 MR. MARKS: Yes.

18 MR. FREI-PEARSON: So stipulated.

19 Q. I will have you take a look at page 20
20 from Joint Exhibit 7.

21 Can you identify that document for us,
22 please?

23 A. Yes.

24 Q. What is that document?

25 A. Operator Proposal.

ARBITRATION

33

1 Q. Did you sign this document?

2 A. Yes.

3 Q. When did you sign this document?

4 A. I signed that document on May 11, 2015.

5 Q. Was that before or after you began

6 working for Parts Authority?

7 A. It was before.

8 Q. Why did you sign this document?

9 A. Because Fred told me that I had to.

10 Q. Were you given a copy of this document?

11 A. No.

12 Q. Did Fred give you an opportunity to

13 read it?

14 A. No.

15 Q. If you look at the second bullet point,

16 you see the number \$2,300 written in. Who wrote in

17 that amount?

18 A. I did.

19 Q. Where did that amount come from?

20 A. Fred told me to write it down.

21 Q. Did you ever negotiate that amount?

22 A. No.

23 Q. Did you ever have the opportunity to

24 negotiate that amount?

25 A. No.

ARBITRATION

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1 Q. If you look at the second bullet point,
2 it says: I will provide an invoice requesting
3 payment of my fees for each engagement.

4 Did you ever have to submit an invoice
5 to Diligent or to Parts Authority for the cost of
6 your services to them?

7 A. No.

8 Q. Did you ever have to submit an invoice
9 to either Diligent or Parts Authority to get paid?

10 A. No.

11 Q. Did you ever submit an invoice to
12 Diligent or to Parts Authority?

13 A. No.

14 Q. Let me turn your attention to the
15 fourth bullet point now.

16 It says: I do not require from you any
17 training or any instruction on how to complete an
18 engagement.

19 After you began working for Parts
20 Authority, did you require any instruction?

21 A. Yes.

22 Q. Were you given any instruction?

23 A. Yes.

24 Q. Who gave you that instruction?

25 A. It was Tammie.

ARBITRATION

35

1 Q. What instruction did Tammie give you
2 once you were hired?

3 A. Well, he told me that I have to get two
4 day's training. He set me up with a delivery driver
5 to drive for two days. And he told me -- she told me
6 that CJ will treat me the right way.

7 ARBITRATOR MASUCCI: Who is CJ?

8 MS. LUCIO: That's how they call him.
9 It was a delivery guy that did delivery. I know
10 him by the nickname CJ.

11 ARBITRATOR MASUCCI: Okay. That's his
12 name. That's all right.

13 Q. Who was Tammie?

14 A. Tammie was my warehouse manager.

15 Q. Did you actually observe Tammie assign
16 CJ to train you for two days?

17 A. Yes.

18 Q. Did you actually have two days of
19 training when you first started at Parts Authority?

20 A. Yes.

21 Q. Who provided that training?

22 A. Tammie.

23 Q. Did you ride along with CJ?

24 A. Yes.

25 Q. What were you taught as part of that

ARBITRATION

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1 training?

2 A. Well, he told me how Tammie wanted to
3 be. He told me how the delivery is supposed to be
4 done, which way to go to the customers, what papers
5 the customer needed to be signed, and he told me how
6 to -- he basically told me how to do my job.

7 Q. The fourth bullet point down says:
8 Also, rather I will retain absolute control over the
9 means and methods used to complete an engagement
10 including the selection of which routes to follow.

11 After you started your job, did Tammie
12 treat you like you retained control over the way you
13 performed your job --

14 MR. MARKS: Objection.

15 Q. -- or determined delivery routes?

16 MR. MARKS: Now I object.

17 ARBITRATOR MASUCCI: Overruled.

18 A. Yes. She would tell me. She would
19 require me to do -- she told me how to do my
20 deliveries, what roles to take, and how fast she
21 wanted me to do the deliveries. And she also
22 approved my breaks, and sometimes she took away my
23 breaks.

24 Q. Let me turn to the first page of Joint
25 Exhibit 7, please. It's numbered, actually, page 2

ARBITRATION

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1 at the bottom.

2 Can you identify this document for us,
3 please?

4 A. Yes.

5 Q. What is this document?

6 A. The operator agreement.

7 Q. Did you sign this document?

8 A. Yes.

9 Q. How did it come about that you signed
10 this document?

11 A. Fred told me to sign it.

12 Q. Okay. When did you sign this document?

13 A. I signed that document on May 11, 2015.

14 Q. Was that before or after you began your
15 work for Parts Authority?

16 A. It was before.

17 Q. Did Fred give you an opportunity to
18 read this document?

19 A. No.

20 Q. Did Fred tell you to hurry up and sign?

21 A. Yes.

22 Q. Were you given a copy of this document
23 that we're looking at, the owner operating agreement,
24 to take with you or for your own use?

25 A. No.

ARBITRATION

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1 Q. Paragraph 3D of this document is at the
2 bottom of page 3. It says: Should the
3 owner/operator elect to perform services, the
4 operator shall perform the services and in connection
5 therewith shall select the route or routes to be
6 taken.

7 Did that turn out to be true once you
8 began working for Parts Authority?

9 A. No.

10 Q. Why do you say that?

11 A. Because Tammie was controlling my runs,
12 she was controlling my breaks, she was controlling
13 the way I should take my routes, and she was
14 controlling how fast I was doing my routes. And she
15 also took -- she approved if I was entitled for break
16 or not.

17 Q. Did Tammie sometimes give you more than
18 one delivery to take on a route?

19 A. Yes.

20 Q. Could you take the deliveries in any
21 way that you wanted?

22 A. No.

23 Q. Why not?

24 A. Because she said I have to do it how
25 she told me to do it.

ARBITRATION

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1 Q. Would she tell you that one delivery
2 has to go first, one has to go second and so forth?

3 A. Yes. She gave me the route, which is
4 like the same order in the routes.

5 Q. Paragraph 3D also says: All other
6 matters relating to the services regarding any
7 particular items shall be in the control and the
8 discretion of operator.

9 Once you began working for Parts
10 Authority, did that turn out to be true?

11 A. No.

12 Q. Tell us why you say that.

13 A. Because like I say, Tammie was
14 controlling everything, how fast I was loading my
15 van, how fast I was doing my routes. And she will
16 call me if I already did my deliveries. And she
17 would shoot me out if I was like -- she would have
18 told me like you should be here like five minutes
19 ago. Where are you?

20 Q. Did she say she was calling you while
21 you were on your deliveries?

22 A. Yes.

23 Q. What kind of things was she telling you
24 when she called you while you were on your
25 deliveries?

ARBITRATION

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1 A. Well, she will told me where I was,
2 what I was doing and why I was taking too long.

3 Q. Did that happen frequently?

4 A. Yes.

5 Q. About how frequently?

6 A. Several times a day.

7 Q. Let's go to paragraph 5C of the same
8 document, which is at the bottom of page 4, please.
9 It talks about having to prepare invoices for
10 Diligent.

11 Did that turn out to be true once you
12 began working for Parts Authority?

13 A. No.

14 Q. Did you ever have to prepare an invoice
15 for Diligent or Parts Authority to get paid?

16 A. No.

17 MR. MARKS: Didn't we ask that before?

18 MR. POTASHNICK: Sorry with the
19 repetitiveness. It's going to be very quick
20 here.

21 Q. Let's turn to a later page of Joint
22 Exhibit 7, which is at page 28 at the bottom.

23 What is this document, please?

24 A. It's for frequently asked questions.

25 Q. Did you sign this document?

ARBITRATION

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1 A. Yes.

2 Q. Why did you sign this document?

3 A. Because Fred told me that I had to.

4 Q. Did Fred give you an opportunity to
5 read this document?

6 A. No.

7 Q. How did Fred prevent you from an
8 opportunity to read this document?

9 A. He basically was over me and staring at
10 me while I was, like, trying to look at papers.

11 Q. What was he saying?

12 A. He said to hurry up because they need
13 another delivery driver right away.

14 Q. When did you sign this document?

15 A. I sign it on May 11, 2015.

16 Q. Was that at the same time you signed
17 the operator proposal that we looked at and the
18 owner/operator agreement that we looked at?

19 A. Yes.

20 Q. Did you sign this document, frequently
21 asked questions, before or after you began your work
22 with Parts Authority?

23 A. Before.

24 Q. Were you given a copy of this document,
25 the frequently asked questions?

ARBITRATION

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1 A. No.

2 Q. Question 3 in these frequently asked
3 questions says: How do I get the opportunity to
4 provide delivery services for a client? By
5 negotiating terms with Diligent for each engagement.

6 Did you ever negotiate your pay or any
7 other terms of your work with Diligent?

8 A. No.

9 Q. Did you ever an opportunity to
10 negotiate your pay or any of the other terms of your
11 work with Diligent?

12 A. No.

13 Q. Let's turn to question 10, please.

14 It says: Will there be any set hours?
15 No. You will have to complete any engagement that
16 you accept or you will assume liability for not doing
17 so. You determine and control the number of hours
18 required to complete an engagement.

19 After you began work for Parts
20 Authority, did it turn out to be true that you did
21 not have any set hours of work?

22 A. No.

23 Q. Why do you say that?

24 A. Because Fred and Tammie told me what
25 time I should start working, which was 8 a.m., and

ARBITRATION

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1 that I have to be there on time, and she doesn't like
2 people to be late, so I have to be there before 8.

3 Q. Were you given any time that your work
4 day would end?

5 A. Yes.

6 Q. Who gave that to you?

7 A. Fred and Tammie told me that.

8 Q. What time did they give you as the time
9 your work day would end?

10 A. I have to be there until 6 p.m. or
11 sometimes after that. My work would finish like
12 6:45 or 7 p.m.

13 Q. Why would your work go beyond 6 p.m.?

14 A. Because they gave me late runs, which
15 is like five minutes to six. And if I denied those
16 runs, Tammie would chew me out and tell me that I
17 have to take those runs, otherwise Parts Authority
18 would not need me anymore.

19 Q. Let me turn your attention to question
20 and answer 13 which is on the same page, 29. It
21 says: Will Diligent provide me with any written or
22 verbal instructions for the order or sequence in
23 which the services must be performed? No. The
24 customer will describe the type of services to be
25 provided. You will use your experience and

ARBITRATION

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1 background to determine the order and sequence of the
2 services to be provided, including the routes to
3 follow.

4 After you started work for Parts
5 Authority, did that turn out to be true, that you
6 could determine the order of tasks or the order of
7 deliveries on routes?

8 A. No.

9 Q. Why do you say that?

10 A. Because Tammie would set my routes and
11 told me what routes to take. And if I take the -- if
12 I take the wrong route, she will call me and say
13 where I was.

14 Q. What happened after you signed these
15 documents that we've just looked at?

16 A. Fred told me to go to the warehouse and
17 start working for Parts Authority.

18 Q. Whose warehouse is that?

19 A. It's Parts Authority's warehouse.

20 Q. Who was the manager of that warehouse?

21 A. It was Tammie.

22 Q. Where was that Parts Authority facility
23 located?

24 A. 200 Hembree Parkway.

25 Q. During the weekdays, Monday through

ARBITRATION

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1 Friday, what hours did you typically work for Parts
2 Authority?

3 A. I would work 8 a.m. to 6 p.m. or later.

4 Q. You told us about why you worked later.

5 A. Yes.

6 Q. Who was assigning you to work later?

7 A. Tammie.

8 Q. On Saturdays, what hours would you
9 work?

10 A. On Saturdays I would work 8 a.m. to
11 3 p.m., or we rotate drivers, which is like sometimes
12 drivers have to work until 5, and sometimes it was my
13 turn to work until 5.

14 Q. About how many hours a week were you
15 working for Parts Authority typically?

16 A. Typically I was working 50 to 60 hours
17 for the six days.

18 Q. Were there a couple of weeks where you
19 worked less than 50 hours?

20 A. Yes. I was basically working 30 to 40
21 hours a week.

22 Q. Did you have a supervisor at Parts
23 Authority?

24 A. Yes.

25 Q. Who was that?

ARBITRATION

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1 A. Tammie.

2 Q. What was Tammie's job at Parts
3 Authority?

4 A. She was a warehouse manager.

5 Q. How often would you communicate with
6 Tammie during the time that you worked for Parts
7 Authority?

8 A. Every day.

9 Q. Was it usually just once a day?

10 A. Several times a day.

11 Q. Were those communications with Tammie
12 in person, by phone, by text, by E-mail; what
13 methods?

14 A. She would usually call me and tell me
15 where I was and if I was done with the delivery, and
16 how -- she wanted to be like faster and come back and
17 get more deliveries.

18 Q. So she would call you while you were
19 out on deliveries?

20 A. Yes.

21 Q. So what other kinds of management would
22 Tammie call you about when you were on deliveries?

23 A. To make sure I was doing the right
24 thing, or she would call me if she needed me to do
25 something else.

ARBITRATION

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1 Q. If she needed you to do something else,
2 would she reassign you through the phone call?

3 A. Yes. Like pick up checks or go to
4 another location and get a check. Stuff like that.

5 ARBITRATOR MASUCCI: And pick up
6 another check from a different client?

7 MS. LUCIO: Yes.

8 Q. Were there times when deliveries took
9 longer than expected?

10 A. Yes.

11 Q. Can you give me examples of what
12 happened?

13 A. Well, sometimes I have to -- like I
14 say, I have to -- five minutes to 6 they will assign
15 me like a late run, or so I have to take that run and
16 finish later that day.

17 So sometimes if I took longer runs, I
18 mean longer time, it's because either the road was
19 closed and I have to make a U-turn and come back and
20 find another route. I have to not follow the route
21 because I couldn't go through the same route. So she
22 will call me and say where are you. So I have to
23 explain to her what I was doing over there. So it
24 was kind of frustrating over -- I was working on all
25 the pressure all the time.

ARBITRATION

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1 Q. Were you ever chewed out because you
2 didn't take the route that Tammie told you to take?

3 A. Yes.

4 Q. While you performed work for Parts
5 Authority, did you communicate with anybody from
6 Diligent?

7 A. Yes.

8 Q. Who was that?

9 A. Fred.

10 Q. Have you ever spoken to anybody from
11 Diligent other than Fred?

12 A. No.

13 Q. About how often was Fred in the Parts
14 Authority shop while you worked there?

15 A. I saw him a few times only.

16 Q. About how often did you communicate
17 with Fred during the time you worked for Parts
18 Authority?

19 A. I would call him like -- maybe on those
20 times I would call him like two times.

21 Q. What topics did you communicate with
22 Fred about?

23 A. Because at one point I had a question
24 about why -- because I was like five minutes late
25 that day because I have to drive my daughter to

ARBITRATION

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1 school. So she told me you not allowed to take a
2 break today because you were late. So I was like why
3 not? So she told me no, you can't. You have to work
4 the whole shift. I was like I was concerned about my
5 daughter who was going to go pick her up. I have two
6 kids.

7 So I called Fred and I say, look Fred,
8 Tammie is taking my breaks away. Who should I listen
9 to? So Fred told me like no. You have to listen to
10 Tammie because Tammie is your boss. Whatever she
11 say, that's what you have to do.

12 Q. Did being a delivery driver for Parts
13 Authority require any particular skill?

14 A. No.

15 Q. When you were training with CJ for two
16 days, what was CJ telling you to do?

17 A. He would tell me what to do on the
18 route, and he showed me what papers the customer
19 needed to be signed, and he told me how Tammie wanted
20 to be the job done. And he showed me which way to
21 get to the customers and give them the parts. And he
22 showed me how to check the invoice, check with the
23 parts numbers to make sure I delivered the right
24 part.

25 Q. Was that part of your job to check

ARBITRATION

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1 parts for delivery against invoices to make sure you
2 were delivering the right parts?

3 A. Yes.

4 Q. Was it part of your job to obtain
5 customer signatures to verify deliveries?

6 A. Yes.

7 Q. Was it part of your job to ask the
8 customers if they had any returns or defects?

9 A. Yes. I needed to make sure of that,
10 because otherwise if the customer called Tammie and
11 say I got some returns, Tammie will chew me out and
12 say why didn't you ask the customer for returns.

13 So I was obligated to ask the customers
14 if they have any returns like cords or batteries, or
15 stuff like that that they needed to be credited to
16 their accounts.

17 Q. Was it part of your job to answer
18 customers' questions or concerns?

19 A. No.

20 Q. What were you supposed to do on the job
21 if a customer that you were delivering to had a
22 question or a concern?

23 A. Well, the customer will ask me
24 questions, and I would call Tammie, and say Tammie,
25 the customer has a question. Would you talk to them?

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1 And then Tammie would talk to the
2 customers about the questions that the customer had
3 to Parts Authority.

4 Q. How did you know you were supposed to
5 get customers' signatures to verify deliveries of
6 products?

7 A. That's how I was trained to do.

8 Q. How did you know you were supposed to
9 ask about returns or defects at the customer
10 location?

11 A. Well that's how CJ trained me to ask
12 questions to the customers.

13 Q. How did you know you were supposed to
14 get Tammie on the phone if the customer had a
15 question or concern?

16 A. Because that's how CJ trained me to do.

17 Q. Were there particular doors that you
18 were supposed to use for deliveries?

19 A. Yes.

20 Q. How did you know that?

21 A. Because CJ told me which door to do my
22 deliveries so I can get a customer signature on the
23 invoice, that way they verified that they got their
24 right part.

25 Q. How did you know it was part of your

ARBITRATION

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1 job to check parts for delivery against invoices to
2 make sure you would be delivering the correct parts?

3 A. That's how Tammie tell me to do that.

4 Q. Work started at 8 a.m. Did you ever
5 arrive a little after 8 a.m.?

6 A. Yes.

7 Q. What did Tammie say to you when that
8 happened?

9 A. Well, she will call me and ask me where
10 I was. And I should be there -- you know, she would
11 tell me like you should be here by now. Where are
12 you?

13 So I have to explain to her that I was
14 dropping off my daughter, and I will be there in a
15 few minutes.

16 Q. How old was your daughter at the time?

17 A. She was six.

18 Q. Did Tammie ever impose any consequence
19 or discipline for being late?

20 A. Yes.

21 Q. What was that?

22 A. She took my breaks away.

23 Q. Did anyone at Parts Authority keep
24 track of when you began and ended your shifts?

25 A. Yes.

ARBITRATION

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1 Q. Who was that?

2 A. Tammie.

3 Q. How did Tammie do that?

4 A. She got like a notepad where she was
5 writing all the names of the delivery drivers.

6 Q. A notepad?

7 A. Yes.

8 Q. Did you ever see that notepad?

9 A. Yes.

10 Q. What was written on the notepad that
11 you saw?

12 A. It had all the names that Diligent
13 would send to Parts Authority, and they had the name,
14 and the time in and time out.

15 Q. Were you one of the delivery drivers
16 whose names and times in and times out you saw on
17 Tammie's notepad?

18 A. Yes.

19 Q. Who determined how many days per week
20 you had to work for Parts Authority?

21 A. Tammie and Fred.

22 MR. MARKS: Objection. Foundation.

23 ARBITRATOR MASUCCI: Overruled. I want
24 to hear it.

25 Q. Is that something that they told you?

ARBITRATION

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1 A. Yes.

2 Q. When you finished a delivery or a group
3 of deliveries, what were you supposed to do?

4 A. I had to get back to the warehouse, to
5 Parts Authority warehouse, for more deliveries.

6 Q. How did you know that?

7 A. Because that's how I was trained.

8 Q. By who?

9 A. By CJ.

10 Q. If you finished a delivery assigned
11 that would take you after 6 o'clock, could you go
12 home?

13 A. Yes.

14 Q. Was that still the case if the delivery
15 was finished before 6 p.m.?

16 A. If it was close to 6 p.m., I would call
17 Tammie and ask Tammie if it was okay for me to go or
18 come back to the house, but I have to get her
19 approval first.

20 Q. Could you determine your work schedule
21 at Parts Authority?

22 A. No.

23 Q. Why not?

24 A. Because they told me when I was to
25 start and when I should go home.

ARBITRATION

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1 Q. When you say "they," who are you
2 referring to?

3 A. Tammie.

4 Q. How did you know where to deliver Parts
5 Authority's products?

6 A. Well, that's how they trained me to
7 do -- to take all my delivers to the places, and I
8 just had to -- that's how Tammie was training me to
9 do my deliveries. I would just follow the addresses.

10 Q. How many deliveries would you make in
11 an average day?

12 A. I will make six or more, sometimes over
13 that.

14 Q. Could you determine when you got around
15 to performing your deliveries?

16 A. No.

17 Q. How do you know that?

18 A. Because they had the routes already, so
19 they told me which way and what routes to take.

20 Q. Okay. Did Tammie ever tell you how
21 fast you needed to do your deliveries?

22 A. Yes. She will call me and ask me where
23 I was and told me that I needed to be back five
24 minutes ago or what I was doing or where I was at.

25 Q. Could you determine how fast or slow to

ARBITRATION

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1 load your own vehicle with Parts Authority's
2 products?

3 A. No.

4 Q. Why not?

5 A. Because Tammie was supervising how fast
6 I was loading my car, and she told me to do it quick
7 so that way I can get out with the produce to do the
8 delivery.

9 Q. Are you familiar with the term hot shot
10 delivery?

11 A. Yes.

12 Q. Tell us what a hot shot delivery is.

13 A. Those are the ones that needs to be
14 done faster, less than an hour.

15 Q. Were you ever assigned to deliver hot
16 shot deliveries?

17 A. Yes.

18 Q. Were you told how fast to deliver those
19 hot shot deliveries?

20 A. Yes.

21 Q. Who told you that?

22 A. Tammie.

23 Q. Did you comply with Tammie's
24 instructions on how fast to deliver those hot shot
25 deliveries?

ARBITRATION

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1 A. Yes.

2 Q. Could you decide to deliver a product
3 on the next day or the following day?

4 A. No.

5 Q. Why not?

6 A. Because that's not how I was trained.
7 I was supposed to do my deliveries the same day.

8 Q. Did you ever try to refuse a delivery
9 that Tammie assigned to you?

10 A. Yes.

11 Q. What came about?

12 A. Because sometimes she would give me a
13 total of six or 10 batteries, and I told her that
14 that was overloading my minivan, and that would cause
15 some damage in my car.

16 She would reply me, well, that's what
17 you have to do. If you don't want to do it, we won't
18 need you anymore.

19 Q. Did you ever try to refuse a delivery
20 that was assigned to you close to 6 p.m.?

21 A. Yes.

22 Q. What was the result?

23 A. She would say that I needed to take
24 that route, and if she didn't care, it was close to
25 6 p.m. She say that I needed to take it, otherwise I

ARBITRATION

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1 can just go home.

2 Q. By that, was she requiring you to do
3 the delivery?

4 A. Yes.

5 Q. Before you left Parts Authority's
6 facility with deliveries, what were you supposed to
7 do?

8 A. I was supposed to get the invoice, make
9 sure it match the parts with the invoice, and make
10 sure I was taking, like I say, the right part.
11 Otherwise if I want to take the right parts, Tammie
12 would get mad at me because I didn't check the
13 invoice.

14 Q. Did it ever occur that you left the
15 Parts Authority facility with a wrong part?

16 A. Yes.

17 Q. What was the consequence of that?

18 A. The consequences was that Tammie would
19 chew me out and say you supposed to be checking the
20 produce. What were you doing? She would get mad at
21 me.

22 So I had to come back, get the right
23 part and head out again to deliver the right part to
24 the customer, and she would, like, get mad at me
25 because I didn't check the part.

ARBITRATION

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1 Q. Did Tammie ever observe you checking to
2 make sure that the parts were correct before leaving
3 for deliveries?

4 A. Yes.

5 Q. Did she ever try and stop you from
6 doing that?

7 A. No. Never.

8 Q. What were you supposed to do when you
9 arrived at each delivery location?

10 A. I supposed to get there and get -- get
11 the parts to the customers and make sure they sign
12 the invoice and verify -- like they verify me that
13 they got the right part.

14 Q. How did you know to do that?

15 A. Well, that's how Tammie and CJ trained
16 me to do.

17 Q. What is a packing slip or invoice?

18 A. An invoice where it has the part number
19 and what part needs to be delivered, and it has the
20 address where I'm supposed to be delivering the parts
21 and the quantity of how many parts there were, and it
22 has the address of the customers.

23 Q. Let me turn your attention to Joint
24 Exhibit 1 please, which is just a one-page exemplary
25 document.

ARBITRATION

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1 Can you identify that document for us?

2 A. Yes.

3 Q. Is that a document you worked with at
4 Parts Authority?

5 A. Yes.

6 Q. What is that document?

7 A. Invoice.

8 Q. Is that the type of document you would
9 check against the parts that were prepared for you to
10 deliver?

11 A. Yes.

12 Q. Did Tammie require you to do anything
13 that wasn't part of Parts Authority's work?

14 A. Yes.

15 Q. What did she require you to do?

16 A. She would make me get her lunch. She
17 would like get hungry and say can you get me my
18 lunch. Sometimes I have to make a special delivery
19 just to get her lunch.

20 Q. Did Tammie require you to mail her
21 letters?

22 A. Yes. She would say can you take this
23 to the post office, and I will say yes.

24 Q. All right. Did you look at the
25 letters?

ARBITRATION

61

1 A. Yeah. It was her personal mail.

2 Q. It wasn't Parts Authority envelopes?

3 A. No.

4 Q. Who was Tammie's assistant?

5 A. It was Monica.

6 Q. What was Monica's position at Parts
7 Authority?

8 A. She was a supervisor and dispatcher.
9 They call her dispatcher. She give the runs and
10 like, of course, it was Tammie next to Monica all the
11 time. She was keeping an eye on everything.

12 Q. Did Monica ever require you to do
13 anything that wasn't work related?

14 A. Yes.

15 Q. What did she require you to do?

16 A. One time she told me that her car
17 needed some tires. She asked me to go get her some
18 tires. So I drove her car to Tire Plus, went and got
19 her tires, and wait for them to install the tires,
20 and then I came back again with her car, park it, and
21 then I say okay.

22 After that she got mad at me because
23 even though I did her a favor, she was complaining
24 because I took too long. You know, it was like what
25 is this. Why is she doing this to me?

ARBITRATION

62

1 Q. What did Tammie tell you about whether
2 you can or can't use your cell phone in Parts
3 Authority's facility?

4 A. She told me not to use it.

5 Q. Did you comply with that rule the best
6 you could?

7 A. I think the best I could.

8 Q. Did you ever ask Tammie to make
9 telephone calls from Parts Authority's facilities on
10 your cell phone?

11 A. Yes.

12 Q. What would be her responses?

13 A. She would say no.

14 Q. What kind of situations came up that
15 caused you to ask Tammie for permission to make
16 calls?

17 A. Sometimes I receive a call from the
18 school about my daughter, and I have to take the
19 phone call. Whether she like it or not, I needed to
20 talk to see what was wrong with my daughter.

21 Q. Did you tell Tammie that was the reason
22 you needed to make the phone call?

23 A. Yes.

24 Q. What was her response?

25 A. She say I was not allowed, but I

ARBITRATION

63

1 already done it.

2 Q. Did Tammie ever discipline you?

3 A. Yes.

4 Q. She disciplined you for doing what?

5 A. How fast I was doing my deliveries.

6 Like she would say you supposed to do it faster, and
7 you supposed to be here like five minutes ago, and
8 she would -- she would like take away my breaks by
9 not doing what she told me to do.

10 Q. Did she ever discipline you for
11 arriving late to work?

12 A. Yes.

13 Q. What was the discipline?

14 A. She would take my breaks away. She say
15 you late, so you not entitled to it.

16 Q. Typically, about how many days a week
17 would Tammie take away your breaks?

18 A. Two times.

19 Q. Did Tammie ever criticize you for your
20 work performance?

21 A. Yes.

22 Q. What did she criticize you about?

23 A. She criticized me for taking too long
24 on my runs, for not doing her -- what she requires me
25 to do, and she would criticize me for taking too long

ARBITRATION

64

1 on my runs. She would criticize me for being late,
2 and she also took my breaks away.

3 Q. Did you ever ask Tammie for breaks from
4 work?

5 A. Yes.

6 Q. What did you ask Tammie for those
7 breaks for so that you could do it?

8 A. Well, I used my breaks to go pick up my
9 son because my son had like anxiety, panic attacks
10 and depression. So I usually asked Tammie if I could
11 see my son on my breaks and make sure my son was
12 doing okay. So she say it's not my problem. You
13 can't go.

14 Q. Did Tammie ever deny you a break from
15 work when you requested it?

16 A. Yes.

17 Q. About how often would she deny you a
18 break from work when you asked?

19 A. Twice. Two times a week or more.

20 Q. Did Parts Authority keep track of your
21 deliveries?

22 A. Yes.

23 Q. How did it do that?

24 A. They had a computer.

25 Q. Who was Tammie's boss?

ARBITRATION

65

1 A. It was Mr. Glen.

2 Q. About how many times did you actually
3 see Glen?

4 A. I just saw him like a few times.

5 Q. Did you ever spend any considerable
6 amount of time with Glen?

7 A. No.

8 Q. Did you ever have a conversation with
9 Glen?

10 A. No.

11 Q. Did Parts Authority provide you a
12 vehicle to use to make deliveries?

13 A. No.

14 Q. So whose vehicle did you drive to
15 perform those deliveries?

16 A. My car, my minivan.

17 Q. What make and model is that?

18 A. It's a 2010 Dodge Caravan.

19 Q. About how many total miles did you
20 drive your 2010 Dodge Caravan for Parts Authority?

21 A. Like 12,000.

22 Q. What do you base that on?

23 A. On the mileage that I was driving a
24 day.

25 Q. Did any manager or supervisor from

ARBITRATION

66

1 Parts Authority ever observe your Dodge Caravan?

2 A. Yes.

3 Q. Who was that?

4 A. Tammie.

5 Q. Did Tammie tell you that your Dodge
6 Caravan was not appropriate for deliveries of Parts
7 Authority's products to its customers?

8 A. No.

9 Q. Did Tammie ever indicate that she was
10 pleased that you had such a large vehicle?

11 A. Yes.

12 Q. What did she tell you about that?

13 A. She say it was more convenient, so that
14 way she can put like 10 batteries in my van and
15 sometimes load it up with a lot of stuff, like car
16 parts. And because it was long, the rack and pinions
17 fit perfect, because I had to put all the seats down,
18 and I will put the rack and pinion in my minivan.

19 Q. Did Parts Authority provide you with a
20 gasoline card to pay for the gas you used to make
21 deliveries?

22 A. No.

23 Q. Did Parts Authority ever ask you how
24 much you were spending on your car to perform your
25 job?

ARBITRATION

67

1 A. No.

2 Q. Did Parts Authority ever ask you to
3 turn in a receipt so you could get reimbursed for any
4 vehicle cost?

5 A. No.

6 Q. Did Parts Authority ever ask for any
7 receipt?

8 A. No.

9 Q. Did Parts Authority give you a car
10 allowance?

11 A. No.

12 Q. Did Parts Authority ever reimburse you
13 for any vehicle cost?

14 A. No.

15 Q. Did Parts Authority record your
16 odometer mileage?

17 A. Yes.

18 Q. Who at Parts Authority recorded your
19 odometer mileage?

20 A. Tammie would go in my car and check it
21 out and see how many miles I was driving that day.

22 Q. Was Tammie writing it down?

23 A. I'm not sure of that.

24 Q. How often would Tammie look at your
25 odometer in your car?

ARBITRATION

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1 A. Maybe two or three times a week.

2 Q. Did you drive your Dodge Caravan for
3 personal reasons also during the time you drove it
4 for Parts Authority?

5 A. Yes.

6 Q. Was most of your driving during that
7 time for Parts Authority or for personal reasons?

8 A. It was more for Parts Authority than
9 personal reasons.

10 Q. Did you have any other job at the time
11 you worked for Parts Authority?

12 A. No.

13 Q. Roughly, about what percentage of your
14 driving during the time you worked for Parts
15 Authority was for Parts Authority?

16 A. It was basically like 95 percent, and
17 5 percent out of my own time.

18 Q. Okay. Who did the Dodge Caravan belong
19 to?

20 A. It was me and my husband.

21 Q. So it's your marital property?

22 A. Yes.

23 Q. Did you have to buy gas to perform your
24 job for Parts Authority?

25 A. Yes.

ARBITRATION

69

1 Q. Did you have to pay for oil changes to
2 perform your job for Parts Authority?

3 A. Yes.

4 Q. Did you have to pay for other
5 maintenance of the vehicle to perform your job for
6 Parts Authority?

7 A. Yes.

8 Q. Did you have to pay for repairs on the
9 vehicles -- on your vehicle to perform your job for
10 Parts Authority?

11 A. Yes.

12 Q. Did you have to pay taxes, license and
13 registration fees on that vehicle so you could use it
14 for Parts Authority?

15 A. Yes.

16 Q. Did you have to pay for insurance so
17 you could drive for Parts Authority?

18 A. Yes.

19 Q. Do you believe that your car was
20 depreciating or losing value as you drove it for
21 Parts Authority?

22 MR. MARKS: Objection.

23 A. Yes.

24 ARBITRATOR MASUCCI: On what basis?

25 MR. MARKS: A belief is not any kind of

ARBITRATION

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1 fact in this case.

2 ARBITRATOR MASUCCI: Overruled.

3 Q. Do you think that you had higher car
4 expenses than the average driver while you drove for
5 Parts Authority?

6 MR. MARKS: Objection. Foundation.

7 ARBITRATOR MASUCCI: Overruled.

8 A. Yes.

9 Q. Can you explain why?

10 A. Because it was -- it was a lot of
11 driving and a lot of stopping. It was a lot of
12 turning. It was a lot of turning on and off my
13 engine, and it was a lot of, you know, gas that I
14 have to use. And also, you know, it was a bigger car
15 than most cars. It was a minivan.

16 Q. Let's turn to document 8 in the Joint
17 Exhibit folder, please.

18 What is that document?

19 A. It's the pay stuff.

20 Q. Is it a summary of your pay at Parts
21 Authority?

22 A. Yes.

23 Q. To the best of your knowledge, do you
24 believe that that document is correct?

25 A. No.

ARBITRATION

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1 Q. You think it's incorrect?

2 A. Yes, it's correct.

3 MR. MARKS: I'm sorry. Which is it;
4 correct or incorrect?

5 MS. LUCIO: It's correct.

6 ARBITRATOR MASUCCI: This says
7 Diligent. The paystubs were from Diligent or
8 Parts Authority?

9 A. It's Diligent.

10 Q. That was my next question. Okay.

11 Did you have regular pay days while you
12 worked for Parts Authority?

13 A. Yes.

14 Q. When were you paid?

15 A. I was paid every 5th and every 20 or
16 every month.

17 Q. Did that correspond to the pay periods
18 of the first half of the month and the last half of
19 the month?

20 A. Yes.

21 Q. How much were you supposed to be paid
22 per half month?

23 A. I was supposed to get paid \$1,150.

24 Q. Did you ever receive \$1,150 per half
25 month?

ARBITRATION

72

1 A. No.

2 Q. Were there half months that you worked
3 every day from Monday to Saturday?

4 A. Yes.

5 Q. Were you ever paid overtime wages while
6 you worked at Parts Authority?

7 A. No, never.

8 Q. While you worked at Parts Authority,
9 did you depend on your income from Parts Authority to
10 meet your living expenses?

11 A. Yes.

12 Q. Did you ever try to take a day off from
13 work from Parts Authority?

14 A. Yes.

15 Q. Who was the first person you asked to
16 take a day off?

17 A. I have to ask Tammie.

18 Q. What would be Tammie's responses?

19 A. She would say she approve it if Fred
20 was okay with that.

21 Q. Did you ask Fred for days off?

22 A. Yes.

23 Q. What did Fred tell you?

24 A. Fred told me that I have to ask Tammie
25 because Tammie was my boss.

ARBITRATION

73

1 Q. Did Fred or Tammie ever deny you a day
2 off from work?

3 A. Yes.

4 Q. Was it Fred or Tammie?

5 A. It was Tammie.

6 Q. What reason did she give you for
7 denying you a day off?

8 A. Because I needed to stay with my son,
9 which was suffering with anxiety, panic attacks and
10 depression, and they deny me for that.

11 Q. What did she tell you when she denied
12 you?

13 A. She say that's not her problem, that
14 she doesn't care.

15 Q. Did you ever form any business entity,
16 like a corporation or limited liability company, to
17 perform deliveries for Parts Authority?

18 A. No.

19 Q. Did you ever form any business entity
20 like a corporation or limited liability company to
21 perform any work?

22 A. No.

23 Q. Did you ever advertise your services as
24 Parts Authority's delivery driver?

25 A. No.

ARBITRATION

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1 Q. Did you ever advertise your services as
2 a delivery driver of any kind?

3 A. No.

4 Q. Did you ever acquire and maintain any
5 inventory of auto parts that you owned or managed?

6 A. No.

7 Q. Were you responsible for acquiring or
8 maintaining Parts Authority's inventory?

9 A. No. Just delivering parts.

10 Q. Did you ever rent commercial space to
11 maintain any inventory of parts?

12 A. No.

13 Q. Have you ever rented any commercial
14 space for any reason?

15 A. No.

16 Q. Could you hire an assistant to perform
17 your deliveries at Parts Authority?

18 A. No.

19 Q. Why not?

20 A. Because it was already in low money
21 that I couldn't afford paying somebody else to do the
22 job.

23 Q. Did you count on that money to meet
24 your living expenses?

25 A. Yes.

ARBITRATION

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1 MR. MARKS: Objection.

2 ARBITRATOR MASUCCI: It's asked and
3 answered.

4 MR. MARKS: I will be quicker and
5 bolder next time.

6 ARBITRATOR MASUCCI: There is some
7 repetition. I've been allowing it, but just be
8 mindful.

9 MR. MARKS: It's argumentative to put
10 those two questions together.

11 Q. When you worked for Parts Authority,
12 did you manage or supervise anyone else?

13 A. No.

14 Q. Did any of the Parts Authority's other
15 delivery drivers that you worked with in Roswell,
16 Georgia manage or supervise anybody else?

17 A. No.

18 MR. MARKS: Foundation.

19 ARBITRATOR MASUCCI: Overruled.

20 Q. Did you make profits or wages from
21 working at Parts Authority?

22 A. Just wages.

23 Q. Did anybody at Parts Authority or
24 Diligent ever tell you to try to obtain more business
25 from Parts Authority's customers?

ARBITRATION

76

1 A. No.

2 Q. Was it part of your job at Parts
3 Authority to try and obtain more business from Parts
4 Authority's customers?

5 A. No.

6 Q. Could you perform any other work or
7 jobs while you were working for Parts Authority?

8 A. No.

9 Q. Why not?

10 A. Because Parts Authority was consuming
11 most of my time. I was there like 8 a.m. to 6 p.m.,
12 so I couldn't do nothing else.

13 Q. Did you have to wear a uniform shirt
14 for Parts Authority?

15 A. Yes.

16 Q. Who gave you that shirt?

17 A. Fred.

18 Q. Who told you to wear that shirt?

19 A. Tammie.

20 Q. Did you ever try to wear a different
21 shirt to work?

22 A. Yes.

23 Q. What happened?

24 A. She would get mad at me.

25 Q. What would she tell you?

ARBITRATION

77

1 A. She would say I was not allowed to wear
2 other than the uniform.

3 Q. What did the shirt say?

4 A. It says Diligent.

5 ARBITRATOR MASUCCI: The shirt said
6 Diligent?

7 MS. LUCIO: Diligent.

8 Q. Did Parts Authority have its own
9 delivery drivers who were not hired through Diligent?

10 A. Yes.

11 Q. What differences in the job did you
12 observe between the delivery drivers hired through
13 Diligent and Parts Authority's own delivery drivers?

14 A. Well, they wore a different shirt, and
15 also they put parts, like they put them on the
16 shelves, and also they do a little bit of cleaning.

17 Q. Other than that, did you observe any
18 other differences in treatment between the delivery
19 drivers there for Diligent, and the delivery drivers
20 that worked for Parts Authority as W2 employees?

21 A. No.

22 Q. Was there any difference in the way
23 Tammie supervised the two sets of delivery drivers,
24 those through Diligent and Parts Authority's own
25 delivery drivers?

ARBITRATION

78

1 A. No.

2 Q. About how many Parts Authority's own
3 delivery drivers worked at the Roswell Parts
4 Authority location when you worked there at any time?

5 A. Only two.

6 Q. About how many Diligent drivers worked
7 at the Roswell Parts Authority location when you
8 worked there?

9 A. We were like five.

10 Q. Whose vehicles were Parts Authority's
11 own delivery drivers driving to perform their
12 deliveries?

13 A. Their own cars.

14 Q. How do you know that?

15 A. Because they drove in with their cars,
16 and I see them taking deliveries on their own car.

17 Q. Before October 22, 2015, had you ever
18 asked for time off to be with your children?

19 A. Yes.

20 Q. About how old was your son at the time
21 you worked for Parts Authority?

22 A. My son was 16 years old.

23 Q. Well, who did you ask for time off?

24 A. Tammie.

25 Q. What was her response?

ARBITRATION

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1 A. She say she didn't care, because I
2 needed her to give me my breaks because I usually --
3 on my breaks, I usually go pick up my son from
4 school. And because of his depression and anxiety, I
5 used to like pick him up from school, take him home,
6 drop him off, make sure he was safe, and then just
7 drove back to the Parts Authority location and start
8 working my day, and continue with my day, and then --
9 but I had peace of mind that my son was okay.

10 But when she didn't give me those days,
11 those breaks, I was basically stressful thinking how
12 my son was doing, how he was like -- how he was doing
13 over there by himself. And he was like calling me
14 mom, where are you, what are you doing, when are you
15 coming and get me. So I was like just calm down, and
16 I'll be there soon. I didn't get a break today, but
17 I will pick you up as soon as I can.

18 So I was like -- my son was like
19 talking to me all the time, but Tammie did not allow
20 me to go get my son.

21 Q. Do you want just a minute?

22 A. (Nodding)

23 ARBITRATOR MASUCCI: Take your time.

24 (At this time, a brief recess was
25 taken.)

ARBITRATION

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1 CONTINUED EXAMINATION

2 BY MR. POTASHNICK:

3 A. I'm fine.

4 Q. Did you ever ask not to work on a
5 Saturday?

6 A. Yes.

7 Q. Why did you ask not to work on a
8 Saturday?

9 A. Because one day I was working there on
10 Saturdays, and it was only -- it was guys there
11 working that day, and I was the only girl.

12 Tammie usually took weekends off, and
13 Tammie was not there. So I was the only woman there
14 working. I took a delivery, come back, and the guys
15 were doing drugs in the warehouse. So I was like --
16 when I got in and drop off the invoice that they gave
17 me to do the delivery, the house was full of smoke.
18 They were doing drugs.

19 So I got scared. So I went in, in the
20 car and sit down until I get another delivery. I
21 didn't want to deal with them. So I just went and
22 sit down in my car until maybe something else come up
23 that day, that Saturday, that day that I worked. I
24 was just taking deliveries.

25 Q. Were those guys in the warehouse acting

ARBITRATION

81

1 the same or different than usual?

2 A. No. They were acting crazy.

3 Q. Who did you ask not to work on
4 Saturdays?

5 A. I will ask Tammie.

6 Q. What was Tammie's response?

7 A. She say that she didn't give me
8 Saturdays off. She say no.

9 Q. What did Tammie tell you to do?

10 A. That day -- when that happened
11 Saturday, I went on Monday to work. I talked to
12 Tammie about the situation that was there on
13 Saturday. So that's why I asked her to be off
14 Saturdays. But she didn't allow it.

15 Q. What did Tammie tell you to do with the
16 information that you had learned when you returned to
17 the warehouse on Saturday?

18 A. She told me that she would take care of
19 the matter, and she asked me to -- she told me to
20 talk to HR about what happened on Saturday.

21 Q. Did the delivery drivers in the
22 warehouse that were doing the drugs work for Parts
23 Authority directly, or for Diligent, or both?

24 A. They were working for Parts Authority
25 and Diligent.

ARBITRATION

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1 Q. Both?

2 A. Both.

3 Q. Did you speak to Parts Authority's HR
4 about what happened in the warehouse?

5 A. Yes.

6 Q. What did Parts Authority's HR
7 representative tell you would be done?

8 A. She said she told me that she would
9 take care of the matter and just let her take care of
10 the matter. She just wanted me to explain what
11 happened that day.

12 Q. Did she take care of the behavior of
13 just the Parts Authority delivery drivers who were
14 doing the drugs or all of the delivery drivers who
15 were doing the drugs?

16 A. She will take care of everybody that
17 was doing that.

18 Q. Was there any other drug use in the
19 warehouse that you saw after that?

20 A. No.

21 Q. Did you ever see the Parts Authority --
22 I'm sorry -- the Diligent delivery driver who was
23 involved in the drug use doing drugs in the workplace
24 after that?

25 A. No.

ARBITRATION

83

1 Q. How did your employment with Parts
2 Authority end?

3 A. Well, one night my daughter got an
4 asthma attack. So I rush her to the hospital so she
5 can be seen by the doctor. So we stay there until
6 like 4 a.m. in the morning. And then I just, I
7 called in the morning before -- before 8. I called
8 Tammie and I asked Tammie, I can't work today. My
9 daughter was in the hospital. She had an asthma
10 attack, and I needed to be with her. And she -- she
11 told me that I couldn't do it because either like she
12 say I had too many problems, that she give me a
13 choice, either continue working for Parts Authority
14 or choose my family. I just say well, I choose my
15 family, because my daughter needed me that day.

16 Q. Did you call Fred after that?

17 A. Yes.

18 Q. Did you tell Fred what had happened?

19 A. Yes.

20 Q. Did Fred give you a choice?

21 A. He told me that it was Tammie, and that
22 he would have nothing else to say to me. That
23 Tammie -- you know, Tammie tell me that, you know,
24 either choose my family or the job, so he had no
25 problem with that. So I resigned.

ARBITRATION

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1 Q. Did you still have any Parts Authority
2 parts when you resigned?

3 A. Yes.

4 Q. What parts were those?

5 A. I had a battery in my car, a car
6 battery.

7 Q. Did you tell somebody that you still
8 had that battery?

9 A. Yes.

10 Q. Who did you tell?

11 A. Fred.

12 Q. What did Fred tell you to do about that
13 battery?

14 A. Fred told me to take it to the
15 warehouse, to the Parts Authority's warehouse and to
16 drop it off and just leave from there.

17 Q. Did he tell you when to do that?

18 A. Yeah. He told me to do it the same
19 morning.

20 Q. Is that what you did?

21 A. Yes, I did.

22 Q. Did you ever see Tammie terminate a
23 delivery driver working through Diligent?

24 A. Yes.

25 Q. Who was that?

ARBITRATION

85

1 A. CJ.

2 MR. POTASHNICK: That's all subject to
3 redirect.

4 ARBITRATOR MASUCCI: So why don't we
5 take a break.

6 (At this time, a brief recess was
7 taken.)

8 CROSS EXAMINATION

9 BY MR. MARKS:

10 Q. Miss Lucio, before you began providing
11 delivery services to Parts Authority, you were a
12 delivery driver; is that right?

13 A. Yes.

14 Q. And you were a delivery driver for a
15 competitor company called ATS; right?

16 A. Yes.

17 Q. What does that stand for?

18 A. Auto Tech Supply.

19 Q. How long had you had that job as of May
20 of 2015?

21 A. I had it for like a year.

22 Q. A year. And when you met with Fred on
23 May 11th, 2015, you still had that job; right?

24 A. Yes.

25 Q. So when you testified on direct

ARBITRATION

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1 examination that you needed a job when you were
2 meeting with Fred, that's not really true. You had a
3 job; correct?

4 A. Well, I wanted to see if Parts
5 Authority would pay me more, and I wanted to see if I
6 would get more allowances to support my family.

7 Q. Okay. Then did you ask when you met
8 with Fred to pay you more?

9 A. No.

10 Q. Wasn't that your intention, to go to
11 try to get more?

12 A. I guess 1,150 would look good in a
13 piece of paper, so I didn't negotiate anything with
14 him. I didn't say anything about the amount that he
15 told me to write down on the agreement.

16 Q. You made it sound on direct like you
17 were compelled with Fred, and you didn't have any
18 time, and he was rushing you, but you testified at
19 deposition that he didn't rush you; didn't you?

20 A. He was staring at me. He was like --
21 it was a desk, and he was in front of me, and he was
22 staring at me and told me to hurry up because they
23 needed a delivery driver.

24 Q. I'm sorry. He told you to hurry up?

25 A. Yes.

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1 Q. You didn't testify to that at the
2 deposition either; did you?

3 A. That's why I'm telling you now.

4 Q. I asked you the question at deposition,
5 and you said you didn't say anything.

6 A. I may not understand you that day.

7 Q. Is there anything else in your
8 deposition, because I don't want to go through this
9 all day? When I ask you a question now and it's
10 different, that you then say I didn't understand you.

11 Have you read your deposition lately?

12 A. No.

13 Q. You didn't read it to prepare for this
14 hearing?

15 A. No.

16 Q. Have you ever read it?

17 A. No.

18 Q. Thinking back then, let's start that
19 way, when I took your deposition, which was on
20 October 23 of 2018, is there any other question that
21 I asked you that you think was confusing to you then
22 that you would testify differently now?

23 A. I probably was tired.

24 Q. You were probably tired?

25 MR. MARKS: Let me interject an

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1 objection about occurred several months ago and
2 many of them, that's entirely an unfair
3 question.

4 ARBITRATOR MASUCCI: Why don't you ask
5 the questions that are pertinent.

6 Q. Your meeting with Fred lasted about an
7 hour, didn't it?

8 A. No.

9 Q. Again, you testified back in October
10 that it lasted an hour. Which was it? How long did
11 it last?

12 A. He basically told me to sign it and
13 told me that they needed another delivery driver, so
14 he sent me to Parts Authority.

15 Q. How long did your meeting last?

16 A. Less than an hour.

17 Q. How much less than, 59 minutes?

18 A. Maybe 35 minutes.

19 Q. If you testified it lasted an hour back
20 in October, now you're changing that testimony?

21 MR. POTASHNICK: Let me object here.
22 He's not showing her any testimony.

23 MR. MARKS: Do you want me to? I can
24 waste my time.

25 MR. POTASHNICK: I believe it assumes

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1 facts not in evidence.

2 MR. MARKS: You have the deposition.

3 ARBITRATOR MASUCCI: Okay. To the
4 extent that there was a difference in the
5 testimony, you just identify what the difference
6 is, or show it to refresh her recollection.

7 MR. MARKS: I can do it that way, the
8 standard litigation way.

9 ARBITRATOR MASUCCI: Do you have two
10 copies of it?

11 MR. MARKS: I do.

12 ARBITRATOR MASUCCI: I will give this
13 to her.

14 MR. MARKS: She's probably the youngest
15 person here, so probably her vision would be
16 better. It's the same thing, it's just a
17 Min-U-Script versus a larger one.

18 Do you want one, gentleman?

19 MR. FREI-PEARSON: We have it.

20 Q. So what I'm showing you is the
21 deposition that we took back in October. Okay? Let
22 me direct your attention to page 24, lines 6 and 7.

23 Question: How long did you meet with
24 Fred? Answer: It was just like an hour.

25 A. Mm-hmm.

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1 Q. Was it an hour or a half hour?

2 A. It was less than an hour.

3 Q. Was it closer to an hour or closer to a
4 half hour?

5 A. It was closer to an hour.

6 Q. This meeting that you had with Fred
7 and -- do you know him as Fred or do you know him as
8 Mr. Rosenau?

9 A. Fred.

10 Q. You called him Mr. Fred, so I'll use
11 that. We're talking about Fred Rosenau.

12 That meeting took place in Mr. Fred's
13 office; correct?

14 A. Yes.

15 Q. Not in a Parts Authority facility;
16 right?

17 A. No.

18 Q. There was no Parts Authority symbols in
19 the office; correct?

20 A. No.

21 Q. Not even a Parts Authority coffee mug;
22 right?

23 A. No.

24 Q. Fred asked you about your delivery
25 experience at ATS; correct?

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1 A. Yes.

2 Q. You told him and represented to him
3 that you knew how to be a delivery driver; correct?

4 A. Yes.

5 Q. When you had a meeting with Fred, you
6 discussed with him an opportunity to perform services
7 at Parts Authority; yes?

8 A. No.

9 Q. You didn't discuss Parts Authority?

10 A. No. He just send me the paperwork and
11 told me to sign it.

12 Q. You signed it with no idea what it was
13 that you were going to be asked to do?

14 A. Because like you say, you say I have
15 experience doing delivery. So I was assuming that,
16 you know, driving as a delivery driver was going to
17 be the same thing, you know.

18 Q. My question was a little different.
19 Let me rephrase it.

20 A. Okay.

21 Q. When you met with Fred, were you
22 discussing an opportunity for you to do delivery
23 services at Parts Authority?

24 A. When I meet with Fred, he just give me
25 the paperwork and told me to sign it so I can go work

ARBITRATION

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1 for Parts Authority that same day.

2 Q. So you were discussing Parts Authority?

3 A. He just told me that.

4 Q. Diligent has other customers. You
5 weren't discussing those; right?

6 A. No.

7 Q. Just Parts Authority?

8 A. Just Parts Authority.

9 ARBITRATOR MASUCCI: Can I ask a
10 question?

11 In your direct testimony you said your
12 brother-in-law told you there was a job at Parts
13 Authority to go visit --

14 MS. LUCIO: Yes.

15 ARBITRATOR MASUCCI: -- Fred.

16 MS. LUCIO: He gave me the phone number
17 of Fred, and I call him.

18 ARBITRATOR MASUCCI: So you
19 specifically went to see Fred about a job at
20 Parts Authority; is that correct?

21 MS. LUCIO: Yes.

22 Q. Your brother-in-law Renan was a Parts
23 Authority -- provided services for Parts Authority?

24 A. Yes.

25 Q. Through Diligent; right?

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1 A. Yes.

2 Q. And he had told you, your
3 brother-in-law did, that the delivery for Parts
4 Authority was similar to your deliveries at ATS;
5 correct?

6 A. Yes.

7 Q. And by that, you understood that you
8 were going to be offered or discuss a position as an
9 independent owner/operator through Diligent; correct?

10 A. Yes.

11 Q. And you know what that is because prior
12 to ATS, you were an employee of Maids; correct?

13 A. Yes.

14 Q. A W2 employee?

15 A. Yes.

16 Q. And when you went to ATS, you were an
17 independent owner/operator and got a 1099 form;
18 correct?

19 A. Yes.

20 Q. And filed income taxes in 2014 as an
21 independent owner/operator; correct?

22 A. Yes, because they gave me the 1099.

23 Q. Were you paid directly by ATS, or were
24 you paid by subcontracting concepts?

25 A. It was another company.

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1 Q. And you signed a contract similar to
2 the contract you had with Diligent?

3 A. Yes. But the only thing, I had more
4 freedom over there.

5 Q. No question pending.

6 ARBITRATOR MASUCCI: Your lawyer will
7 ask you to clarify it.

8 Q. On your 2014 tax return, you described
9 the nature of your business as delivery service;
10 correct?

11 A. Yes.

12 Q. After you left, stopped driving for
13 Diligent, you went back to being an independent
14 owner/operator for ATS; correct?

15 A. No.

16 Q. You didn't go back to ATS?

17 A. No.

18 Q. When I asked you at your deposition,
19 did you not testify that you went back to ATS?

20 A. No. I went and worked as a painter,
21 and then I worked for maybe three months, and then I
22 went back to ATS.

23 Q. Okay. So you didn't go directly back
24 to ATS. There was a little interruption in that
25 period --

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1 A. Yes.

2 Q. -- and then you became, went back to
3 ATS as an owner/operator driver?

4 A. Yes.

5 Q. So in 2015, you earned income from ATS
6 as an owner/operator; yes?

7 A. Well, they gave me the 1099.

8 Q. I will ask it again. In 2015, you
9 earned income from ATS as an owner/operator; yes?

10 A. Yes.

11 Q. You filed that combined with the income
12 that had been paid to you by Diligent on your 2015
13 tax return; correct?

14 A. Yes.

15 Q. And you have an accountant do that for
16 you; yes?

17 A. Yes.

18 Q. Was it a good accountant?

19 A. Excuse me?

20 Q. Was it a good accountant?

21 A. I don't know.

22 Q. Do you think that your accountant
23 sought to maximize your offsets against your income
24 for purposes of determining your profits and losses
25 of the operation of your business?

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1 MR. POTASHNICK: Objection. Calls for
2 speculation.

3 A. I didn't make any promise. I just made
4 wages.

5 ARBITRATOR MASUCCI: Why don't you
6 rephrase the question.

7 MR. MARKS: Sure.

8 Q. On your 2015 tax return you reported
9 income from ATS as well as from Parts Authority;
10 correct?

11 A. Yes.

12 Q. And against that income on a Schedule
13 C, you took expenses based upon your services -- the
14 cost of providing services in that business for both
15 ATS and Diligent; correct?

16 A. Yes.

17 Q. My question was whether you think that
18 the estimation of your expenses incurred in operating
19 that business in 2015 was a fair estimate of the
20 expenses you incurred?

21 A. No.

22 Q. It was high or low or what?

23 A. It was low.

24 Q. So your accountant underreported your
25 expenses?

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1 A. I don't understand your question.

2 Q. Do you think that your accountant
3 accurately reported your expenses in 2015?

4 A. No.

5 Q. So it was inaccurate.

6 Do you think it was reported in an
7 amount that was greater than the expenses you
8 incurred or lower than the expenses you incurred?

9 A. Because by working for Parts Authority,
10 I was making less money, and then I was spending more
11 money working for Parts Authority. So it didn't
12 compensate, even though I put the expenses on the tax
13 return.

14 Q. Did you provide your accountant in 2015
15 with any evidence of your expenses?

16 A. Yes, I did, the best I could.

17 Q. What did you provide your accountant?

18 A. I just -- because IRS asks you for
19 receipt and everything. So sometimes I didn't keep
20 my receipt. By working for Parts Authority, I didn't
21 have all the receipts. So I just did the best I
22 could to, you know, to have proof, because I want to
23 be okay with IRS. I do not want to claim less or
24 more because I do not want to get in trouble with
25 IRS.

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1 Q. Good. No one does. It's a pain.

2 A. Yes.

3 Q. So you gave your accountant the
4 receipts that you had?

5 A. The best I could.

6 Q. You wanted to be honest because you
7 were afraid the government might look at you?

8 A. Yes.

9 Q. So you honestly reported your expenses
10 that you incurred?

11 A. Yes.

12 Q. To your knowledge, did your accountant
13 then honestly report that on your tax return?

14 A. Yes.

15 Q. Now let me ask you: Do you have the
16 exhibits there?

17 ARBITRATOR MASUCCI: Yes, she does.

18 Q. Let's go back to an exhibit that your
19 attorney asked you about.

20 Look at Joint Exhibit 7, the proposal.
21 Your attorney asked you about that. That's at
22 page 20.

23 So the first bullet point on your
24 operated proposal that you signed says that you have
25 your own delivery business and will provide all

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1 services and owner operator. That was true, you did
2 have your own delivery business; correct?

3 A. No, I did not.

4 Q. You were not operating as an
5 owner/operator for ATS?

6 A. Yes, but I didn't advertise my service.

7 Q. I didn't ask if you advertised your
8 service. Now that you bring that up, did anyone
9 prevent you from advertising your services?

10 A. Yes.

11 Q. Who prevented you from advertising your
12 services?

13 A. Tammie.

14 Q. May 11th you were not working at Parts
15 Authority yet. You signed this, you testified
16 earlier, before --

17 A. I worked same day.

18 Q. -- before you went to Parts Authority;
19 correct?

20 A. I worked the same day.

21 Q. When you signed this proposal, I'm
22 asking you who prevented you, prior to May 11, 2015,
23 from advertising your services as an independent
24 business?

25 A. Like I say, I didn't read the whole

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1 thing. I just signed it.

2 Q. That's, again, not my question. My
3 question is --

4 A. You're telling me like who liked the
5 services and everything. I didn't read the whole
6 thing. I just signed it. So how do I going to know
7 this if I didn't read it?

8 Q. Again, no one prevented you from
9 reading something you signed; right?

10 A. Yes. He was mad because he was staring
11 at me and standing over me, and he was like looking
12 at me trying to hurry me up so I can work with Parts
13 Authority.

14 Q. But he never said hurry up; correct?

15 A. Yes, he did.

16 Q. He said that?

17 A. Yes.

18 Q. Let me ask you then again to look back
19 at your deposition that we took at page 61, line 21.
20 I asked you --

21 ARBITRATOR MASUCCI: Let her get to it.

22 A. Yes.

23 Q. I'm not talking about this document.
24 This is talking about the FAQs. In fairness, I just
25 want you to know that.

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1 Now we're talking about the proposal,
2 and I asked you about the FAQs. This document was
3 presented to you before you started driving through
4 Diligent; correct? Answer: Correct. Question:
5 Okay. And you had an opportunity to read it;
6 correct?

7 A. Yes.

8 Q. You're saying you could read the FAQs,
9 but you did not read the proposal; is that your
10 testimony?

11 A. I just read what I could, you know. I
12 didn't read the whole thing.

13 Q. You didn't read the whole thing?

14 A. No. I signed it.

15 Q. Back to my question for a second; okay?
16 well, while you have that in front of you, I found
17 what I wanted.

18 Can I direct your attention to page 60,
19 line 4, Question: Did he, we're talking Fred, rush
20 you through the documents and say don't read them?
21 Answer: No. No. He never say.

22 So you now recall differently than you
23 recalled at your deposition, that he did say don't
24 read the documents?

25 MR. POTASHNICK: I object. The part

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1 was truncated that opposing counsel just read.

2 Q. No, he never say. It was just signed.

3 A. I never read it.

4 ARBITRATOR MASUCCI: Could you just
5 read 1 through 6, line 1 through 6. On page 60,
6 line 1 through 6.

7 Now will you ask the question?

8 Q. My question is: Did Fred or did Fred
9 not tell you that you need to hurry up and you can't
10 read the document?

11 A. No.

12 Q. He did not tell you that; correct?

13 A. But the way he was looking at me and
14 staring at me. And, you know, I have common sense.
15 He want me to hurry up so I can go to work for Parts
16 Authority.

17 Q. That was your assumption, but he never
18 said that?

19 A. Well, I was right there.

20 Q. Back on the proposal, the third bullet
21 point says that you will provide at your own costs
22 all tools and equipment, such as a truck and a tarp
23 and all labor needed to complete an engagement that I
24 accept.

25 You did provide your own equipment,

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1 your vehicle and phone. I don't know if you needed
2 anything else, but you did provide that; yes?

3 A. Yes.

4 Q. I think on direct you were asked
5 whether Parts Authority reimbursed you for any
6 expenses, and I think you said no.

7 A. No.

8 Q. Diligent didn't reimburse you for any
9 expenses?

10 A. I didn't have from either one.

11 Q. The fourth bullet point says: I didn't
12 require from you any training or any instruction on
13 how to complete an engagement.

14 That was true; wasn't it? You didn't
15 need anyone to tell you how to deliver auto parts;
16 did you?

17 A. Not really. But basically I was tell
18 me, tell me how to do the job.

19 Q. Did Tammie tell you or did CJ tell you?

20 A. Well, Tammie told CJ to train me how to
21 do the job.

22 Q. You heard her say that?

23 A. Yes.

24 Q. When the training was going forward, he
25 told you -- brought you to customers and said use

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1 this door?

2 A. Yes.

3 Q. And he said use this paperwork?

4 A. Yes.

5 Q. Is there anything else he trained you
6 on that didn't involve Parts Authority's particular
7 delivery model?

8 A. Well, he told me that Tammie wanted to
9 be done, like get the signature from customers and
10 get the returns. And he told me that Tammie wanted
11 to -- like if we're not finished with the delivery,
12 go back again and get more deliveries. That's how I
13 was trained.

14 Q. You had engaged -- when you accepted
15 your engagement, you knew it was to make yourself
16 available to make deliveries all day; right, from 8
17 to 6? Fred had told you that; right?

18 A. Yes.

19 Q. So wouldn't that entail going back to
20 make more deliveries if you have availability?

21 A. Yes. I was obligated to turn back
22 again to get more deliveries.

23 Q. You were there to make deliveries to
24 provide coverage for deliveries from 8 to 6; yes?

25 A. Yes. Sometimes after 6 p.m.

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1 Q. Is it your testimony that Tammie told
2 you to go down this road and make a right turn and
3 make a left over there?

4 A. Yes.

5 Q. When did she ever tell you that?

6 A. Because --

7 Q. Not why. When?

8 A. Every run I took.

9 Q. So every time you went out, Tammie was
10 standing there saying oh, this has to go to Bob's gas
11 station. Go down Route 402, make a left turn, drive
12 a hundred feet, so it's like -- almost like Alexa?

13 A. They do the routes. They're called
14 their routes, which is you have to go to, like you
15 say, Bob's and then go to another auto shop. And
16 then go to another shop, and then you have to take
17 the freeway in order to get to the other shops. And
18 on Exit 6 -- I have another six runs going that way.

19 So I have to do it in the sequence that
20 Tammie would give it to me. I couldn't deny going to
21 take the road and go straight to the freeway and just
22 start my routes on Exit 6.

23 Q. Well, if you had multiple deliveries
24 that were in an order to go, it wouldn't make sense
25 to do that, to go someplace -- go north, then go

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1 south and then go west. It would make sense to go
2 north and north and north; correct?

3 A. That was how I was told to do that.

4 Q. But you knew that as a delivery driver
5 that would make sense?

6 A. That's how I was told.

7 Q. But you knew as a delivery driver
8 before you were told that's what you would do?

9 A. Yeah, because he taught me how to do
10 the job.

11 Q. Even before at ATS, that's how you
12 would do it; right?

13 A. No, because they had different
14 customers. They don't have the same customers.

15 Q. Correct, they don't have the same
16 customers, but their customers have locations.

17 At the warehouse, Tammie had an office
18 in the back of the warehouse; correct?

19 A. No.

20 Q. She did not have an office in the back?

21 A. No.

22 Q. There was a dispatcher; correct?

23 A. Yes.

24 Q. When you came to the warehouse to pick
25 up, there were other drivers there as well; yes?

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1 A. Yes.

2 Q. How was the work distributed, first
3 come, first served?

4 A. Yes.

5 Q. So you would arrive. There would be an
6 invoice with a product to be taken someplace;
7 correct?

8 A. Yes.

9 Q. You didn't pick that product off the
10 shelf; right?

11 A. No.

12 Q. It was there for you?

13 A. Yes. It was on the desk, on Tammie's
14 desk.

15 Q. It was your job to make sure that the
16 invoice was the same part, so you didn't take the
17 wrong thing; correct?

18 A. Yes.

19 Q. And then would there be a conversation
20 you had with the dispatcher or Tammie?

21 A. No. Tammie would just tell me take the
22 run.

23 Q. So she said take this one?

24 A. Yes. Just take this one.

25 Q. And other people were waiting to take

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1 other runs?

2 A. Yes.

3 Q. Is it your testimony that Tammie, while
4 that's happening, would tell you, okay, I want you to
5 take Route 42 and then make a left turn, and go a
6 hundred yards and make a right turn; that's how she
7 would tell you to do it, or did you decide how to get
8 to that specific customer?

9 A. No. Usually I took a route, I took the
10 run, and at one point I was going to Express Oil Crab
11 Apple. And then I went to the road that I was --
12 that I'm supposed to go that road. So it happened
13 that that road was closed. So I was like making -- I
14 have to make a U-turn. I couldn't cross the road.

15 So I turn away and go to Alpharetta
16 Highway. I have to take that road and make a longer
17 run. So when I was making -- finding a way to get to
18 the Crab Apple, they're on the phone. Where are you?
19 What are you doing? You supposed to get back by now.

20 So I have to explain to Tammie, look,
21 the road was closed, so I have make another
22 alternator road so I can get to deliver the products
23 because people were calling for them.

24 Q. So Tammie would call you, and the
25 person would call to see why it was taking you so

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1 long?

2 A. Yes.

3 Q. Not what road you were taking?

4 A. No. She was asking me why I was taking
5 too long.

6 Q. Basically whenever she called you,
7 that's what she would say, why is it taking you so
8 long?

9 A. Yes.

10 Q. In your proposal, again the 5th bullet
11 point says that you reserve the right to perform
12 services for other customers at the same time that I
13 performed services for your clients, Diligent
14 clients; right?

15 A. Diligent's clients?

16 Q. Aren't they Diligent's clients?

17 A. I don't understand the question.

18 Q. I'm reading what you signed. I reserve
19 the right to perform services for other customers at
20 the same time I performed services for your clients.

21 Parts Authority was a diligent client;
22 correct?

23 A. I guess. I was working for Parts
24 Authority.

25 Q. WORLD PAC was a Diligent client;

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1 correct?

2 A. I don't know about that.

3 Q. So you don't know any other Diligent
4 clients?

5 A. No.

6 Q. Did anyone at Parts Authority tell you
7 you couldn't perform services for other customers?

8 A. How could I do that? I was already
9 working.

10 Q. My question is did anyone tell you you
11 couldn't do it?

12 A. No.

13 Q. Now you asked -- so you asked a
14 question and I will tell you. There were multiple
15 days that you did not fulfill your engagement at
16 Parts Authority; correct?

17 A. Multiple?

18 Q. Yes. Like you didn't show up every
19 time you were supposed to show up; right?

20 A. Yes.

21 Q. Yes, you did?

22 A. I didn't show up sometimes.

23 Q. For example --

24 A. Because I asked for the days off, and
25 they gave them to me.

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1 Q. For example, I don't know, August 19,
2 21, 22, 24, you didn't provide services for Parts
3 Authority through Diligent; correct?

4 A. Yes.

5 Q. And on those days, no one told you
6 well, you can't go work for somebody else, you can't
7 provide delivery services for anybody else; did they?

8 A. No. They said this because I was
9 spending time with my family that they need me.

10 Q. Whose decision was that?

11 A. I asked for permission.

12 Q. Whose decision was to it stay and
13 provide time with your family?

14 A. I have to ask Tammie for those days,
15 for permission.

16 Q. It was your decision, was it not, when
17 you wanted to take time off?

18 A. I had those days off, and they approve
19 it, so I took those days off.

20 Q. On those days off when you weren't
21 working, you did what you wanted to do; correct?

22 A. Yes. Like I said, I spend it with
23 family.

24 Q. No one told you from Parts Authority
25 oh, you can't provide services through Uber, you

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1 can't go back and provide services to ATS. No one
2 told you that; correct?

3 A. No, because I was already working more
4 than 10-hour shift in Parts Authority.

5 Q. But you're off, you're not working at
6 all that day.

7 A. Like I say, I asked for approval from
8 Tammie.

9 Q. We're going around in a circle, but
10 you've not answering my question which is whether
11 anyone told you that on those days you could not do
12 work for someone else?

13 ARBITRATOR MASUCCI: She's already
14 answered that.

15 MR. MARKS: What's the answer?

16 ARBITRATOR MASUCCI: I thought the
17 answer was no, nobody told her.

18 MR. MARKS: As long as you understand
19 that.

20 Q. I apologize. If you had said that, my
21 bad.

22 The 6th bullet point says that I may or
23 may not perform the services myself. I may hire my
24 own employees or engage an operator at my own choice
25 and at my own costs.

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1 I know you testified here because your
2 attorney said it, and well, I couldn't because I was
3 making not a lot of money, but the fact is no one
4 told you that you couldn't do that; did they?

5 A. They didn't tell me exactly.

6 Q. You understood when you signed the
7 owner/operator agreement that you were not going to
8 be an employee of Diligent; correct?

9 A. No. I was going to be an employee of
10 Parts Authority.

11 Q. Is the answer to my question, yes, you
12 did not understand you would be an employee of
13 Diligent?

14 A. Yes.

15 Q. You were an independent contractor of
16 Diligent; correct?

17 A. That's what they told me.

18 Q. No one at Parts Authority ever paid you
19 one penny; right?

20 A. No.

21 Q. Diligent paid you money?

22 A. Yes.

23 Q. You never asked Parts Authority why
24 aren't you paying me, why is Diligent paying me;
25 right?

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1 A. No.

2 Q. You never asked them that?

3 A. No.

4 Q. And you never asked Diligent what's
5 this money for, I'm employed by Parts Authority;
6 correct?

7 A. No.

8 Q. Yes, it's correct what I'm saying; yes?

9 A. Yes.

10 Q. Now in your owner/operator agreement,
11 which is still Exhibit 7, paragraph 3A, which is on
12 page 4. I'm sorry. Page 3.

13 It says that Diligent can inform you of
14 opportunities to perform services by advising you of
15 a place and time of the services designated by
16 Diligent customers and any terms designated by
17 Diligent's customers relating specifically to the
18 results of the services to be provided.

19 Diligent did advise you of an
20 opportunity to perform services for its customer
21 Parts Authority; right?

22 A. Yes.

23 Q. Diligent advised you of the place and
24 time of the services designated by Parts Authority,
25 specifically the Roswell store from 8 to 6 p.m.;

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1 correct?

2 A. Yes. I was told by Fred and Tammie.

3 Q. And paragraph 3A continues to say: You
4 have the opportunity -- you have the right to decline
5 or accept that opportunity, and you accepted the
6 opportunity; correct?

7 A. Yes. I signed the papers.

8 Q. No one forced you to do that, that was
9 your voluntary choice; right?

10 A. I needed a job.

11 Q. Again, you had a job paying you money;
12 correct?

13 A. Yes.

14 MR. POTASHNICK: Objection. Asked and
15 answered.

16 MR. MARKS: If your client --

17 ARBITRATOR MASUCCI: I got it.

18 Q. The Parts Authority Roswell store was
19 closer to your house than ATS; right?

20 A. Yes.

21 Q. Was it closer to where your children
22 were going to school, too?

23 A. Yes.

24 Q. So you thought that that opportunity
25 was beneficial to you to accept; yes?

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1 A. Yes.

2 Q. I don't want to be redundant here, but
3 I want to refer to the FAQs, which you also signed at
4 the time which are part of Exhibit 7 and start at
5 page 28. Actually I want to go on 7, which is
6 page 29.

7 The FAQ 7 says: Must I perform a
8 client engagement personally?

9 The answer is: No. You can perform
10 the necessary services yourself, or you can employ or
11 engage others to perform the services for you.

12 No one ever contradicted that
13 statement; did they?

14 MR. POTASHNICK: I object. Asked and
15 answered. It's the same statement.

16 MR. MARKS: I didn't ask that question.

17 ARBITRATOR MASUCCI: Go ahead.

18 Q. No one ever contradicted that written
19 statement, did they, telling you you had to perform
20 them yourself?

21 A. Yes.

22 Q. Who did that?

23 A. Tammie.

24 Q. Let me direct your attention to
25 page 104 of your deposition at line 18 to 20. I

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1 asked you did anyone tell you you could not hire
2 anyone to help you, and your answer was no, nobody.
3 No.

4 Do you now want to change that
5 testimony and say Tammie told you you couldn't hire
6 anyone to help you or do your work?

7 A. Yes, because when somebody else was in
8 the car and she would come out and send them home.
9 So nobody could be -- other than you, you have to be
10 performing the job. Otherwise she will chew you out
11 if somebody else would do that. We were not allowed
12 to have somebody else do the job.

13 Q. Did you have your child in your car?

14 A. No.

15 Q. Who did you have in your car?

16 A. It happened to other drivers. They
17 have like either somebody, or they would send them
18 home.

19 Q. Did it happen to you?

20 A. No.

21 Q. You never tried to have anybody help
22 you?

23 A. No.

24 Q. And nobody ever told you you couldn't
25 do that?

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1 A. Not exactly.

2 ARBITRATOR MASUCCI: Could you just
3 wait until she finishes answering the question
4 before you say anything, please.

5 MR. MARKS: I keep trying to do that.

6 Q. On days that you didn't provide
7 service, did you ever try to send someone in your
8 place?

9 A. No. I was not allowed.

10 Q. You were not allowed. Who didn't allow
11 you?

12 A. Like I say, the contract say one thing,
13 but when you work for Parts Authority, it's another
14 thing. The contract is one thing, and when you work
15 for Parts Authority, it's another thing. They say
16 you allowed to hire somebody, but they will not allow
17 to do that.

18 Q. Who would not allow?

19 A. Parts Authority.

20 Q. Who at Parts Authority?

21 A. Tammie.

22 Q. So Tammie told you?

23 A. Yes. Tammie would not allow anybody to
24 perform the job other than you.

25 Q. You could not send a substitute?

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1 A. No. I didn't have the money to pay
2 somebody else to do that. I was not making enough.

3 Q. That's a different answer.

4 A. I'm sorry.

5 Q. You felt you couldn't do it, or Tammie
6 told you you couldn't do it? Which one is it?

7 A. Tammie told me I couldn't do that.

8 Q. When did she tell you that?

9 A. Many times.

10 Q. You tried many times to send someone,
11 but she said no?

12 A. Like I said, other drivers tried to,
13 but she will not allow it. I assume she will not
14 allow it.

15 ARBITRATOR MASUCCI: You first said
16 that you observed her telling other drivers that
17 they could not send somebody else, that they had
18 to perform it.

19 Are you saying that she told you that
20 too, or your understanding is solely from your
21 observing her do it with others?

22 MS. LUCIO: By observing how she was
23 doing with others.

24 ARBITRATOR MASUCCI: Okay.

25 Q. Did you ever tell Diligent, hey my

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1 contract allows this, but I feel I can't do that, and
2 I want to do that?

3 A. No.

4 Q. Did you report daily to Fred when you
5 were working?

6 A. No.

7 Q. You didn't call him every morning and
8 say okay, I'm on a job?

9 A. No.

10 Q. When you were not going to be, did you
11 call Fred?

12 A. No.

13 Q. You only called Tammie?

14 A. Yes.

15 Q. And Tammie would do what, call Fred?

16 A. I don't know what she did. But I
17 called Tammie and let her know I was coming late or
18 if, you know, that I was on my way to work.

19 Q. And if you weren't going to be in, you
20 asked Fred; didn't you?

21 A. No. I asked Tammie.

22 Q. You never talked to Fred about you're
23 not going to come in that day?

24 A. No.

25 Q. Never?

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1 A. No.

2 Q. When Diligent sent you over to Parts
3 Authority to begin providing services, nobody at
4 Parts Authority's gave you any kind of driving test;
5 did they?

6 A. No. I already know how to drive.

7 Q. Parts Authority didn't give you a drug
8 test?

9 A. No.

10 Q. Parts Authority didn't ask you to fill
11 out any paperwork; right?

12 A. No.

13 Q. Parts Authority didn't give you a
14 employee handbook; correct?

15 A. No.

16 Q. The payments for your services that you
17 received from Diligent are the payments that you
18 contracted to receive from Diligent; correct?

19 A. Can you say it again?

20 Q. Sure. The payments that you received
21 from Diligent for providing delivery services to its
22 customer, Parts Authority, were the payments that you
23 had contracted to receive in your operator's
24 agreement; yes?

25 A. Yes.

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1 Q. Did Tammie treat you any differently
2 than she treated other Diligent drivers?

3 A. No. She treated us all the same.

4 Q. So she went into everyone's vehicle and
5 inspected their mileage?

6 A. Yes.

7 Q. What would be the purpose of her
8 inspecting your mileage?

9 MR. POTASHNICK: Objection. Calls for
10 speculation.

11 Q. Did she tell you why she was inspecting
12 your mileage?

13 A. Sometimes we will say oh, I drive like
14 120 miles. And then she will say that's not true,
15 and then she will go and check it out to see who
16 drove 120 miles or more.

17 Q. The decision to provide services by
18 using a van was your decision; right?

19 A. Yes, that's the only kind I had.

20 Q. You could have gotten a smaller car?

21 A. No. That's the only car I had, a
22 minivan.

23 Q. Well, that's not true though. You have
24 another car. Didn't you have two cars?

25 A. Yeah, but the other one was a truck, so

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1 my husband took it to work.

2 Q. You could have used the truck; right?

3 A. It was the same. It's the six
4 cylinder. It would be the same.

5 Q. No one told you you needed to have a
6 van to make deliveries; correct?

7 A. No.

8 Q. Had you gotten a smaller car, it would
9 have cost you less to drive it; right?

10 A. Maybe, yeah.

11 Q. The decision about gas, that was made
12 by you; right?

13 A. Yes.

14 Q. And the insurance you purchased, that
15 was your decision; right?

16 A. Yes. I have to have insurance,
17 otherwise I will get a ticket.

18 Q. You need insurance, but where to get
19 it, whether you get through the General, or you spend
20 15 minutes and save 15 percent, that's you; yes?

21 A. Yes.

22 Q. We were both talking at the same time.
23 I get it. I apologize.

24 Your insurance carrier that you choose
25 was your decision; correct?

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1 A. Mm-hmm. Yes.

2 Q. When you began in May to provide
3 delivery services to Diligent's customer Parts
4 Authority, you didn't have to show Parts Authority
5 authorization to work; correct?

6 A. What do you mean?

7 Q. Well, there is a requirement by the
8 United States government to provide authorization to
9 work if you're an employee, whether that's a Social
10 Security card, or a passport, one from column A, two
11 from column B type of identification; right?

12 A. No. They knew I had a driver's
13 license. That's all I needed.

14 Q. You didn't have to show them that
15 you're authorized to work in the United States?

16 A. No.

17 Q. You didn't submit any W4 form; correct?

18 A. No.

19 Q. No Parts Authority supervisor ever
20 traveled along with you to see how you were making
21 your deliveries?

22 A. Excuse me?

23 Q. No Parts Authority supervisor or
24 employee at all ever traveled with you to see how
25 your deliveries were going; correct?

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1 A. No. They just did by calling me.

2 Q. Calling you. They didn't call the
3 customers; did they?

4 A. No. Sometimes I put the customer on
5 the phone so they can talk to Tammie.

6 Q. Let me direct your attention to
7 page 113 of your deposition, line 16.

8 A. What page?

9 ARBITRATOR MASUCCI: 113.

10 Q. Question: Did Parts Authority or
11 Diligent require you to take any specific route from
12 where you were going to where you were trying to get
13 to? Answer: No.

14 Your testimony here today is they did
15 tell you how to get there; is that right?

16 A. Yes.

17 Q. So were you accurate at your deposition
18 under oath or no?

19 A. Well, like I was telling you, I told
20 you how Tammie was treating me. So it's basically
21 that's what I'm saying right now, that they
22 controlled me in every run that I had.

23 Q. I know you're saying that now. You
24 didn't say that then; did you?

25 A. No.

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1 Q. In fact, you told me earlier that you
2 used the -- not earlier -- in the deposition that you
3 used GPS to figure out where you were going from time
4 to time; yes?

5 A. Yes.

6 Q. No customer ever called up Parts
7 Authority to complain about deliveries you had made
8 to your knowledge; correct?

9 A. No. Only when they have questions they
10 want to talk to Tammie.

11 Q. That's when you said I can't answer
12 this question, talk to Tammie; yes?

13 A. Yes.

14 Q. Do you know if Diligent -- if Parts
15 Authority employee drivers were supposed to answer
16 the question?

17 A. They didn't know either.

18 Q. Do you know whether they were supposed
19 to answer though?

20 A. No. They supposed to call Tammie too.

21 Q. You didn't have any probationary period
22 at Parts Authority; did you?

23 A. What does that mean?

24 Q. You don't know what a probationary
25 period is?

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1 A. No.

2 ARBITRATOR MASUCCI: She asked what
3 does that mean.

4 Q. No one from Parts Authority ever
5 performed an employment review; did they?

6 A. No.

7 Q. I think, just to confirm, you testified
8 that Tammie asked you to wear a shirt that said
9 Diligent Delivery?

10 A. Yes.

11 Q. And Parts Authority delivery drivers
12 wore a different shirt; correct?

13 A. Yes.

14 Q. Did they say Parts Authority?

15 A. Yes.

16 Q. Parts Authority never required you to
17 put any signage on your car indicating that you were
18 working at Parts Authority; right?

19 A. No.

20 Q. They never gave you any kind of ID card
21 or anything like that; right?

22 A. No. The other drives didn't have that
23 either.

24 Q. So Fred told you that the engagement
25 started at 8 a.m.; correct?

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1 A. Yes.

2 Q. And if you arrived after 8 a.m., you
3 were not fulfilling your engagement that you had
4 contracted to; correct?

5 A. Yes.

6 Q. On the other side of that engagement,
7 the beneficiary of that engagement was Parts
8 Authority and Tammie; yes?

9 A. Yes.

10 Q. So Tammie was telling you you need to
11 fulfill your engagement, be here at 8; yes?

12 A. Yeah, otherwise she would take away my
13 breaks if I was late.

14 Q. Was there any agreement that you had in
15 writing that spoke about any break?

16 A. I supposed to get 30-minute break.

17 Q. Where is that written?

18 A. That's what they told me. I was
19 allowed to have 30-minute break.

20 Q. Who told you that?

21 A. Tammie. She gave everybody a 30-minute
22 break.

23 Q. Diligent didn't contract with you to
24 have a break; correct?

25 A. No.

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1 Q. You're agreement with Diligent was you
2 were available by coverage from 8 to 6; yes?

3 A. Yes. That's why I wanted to make sure
4 that day when I called Fred and said who should I
5 listen to, because Tammie is taking my breaks away
6 knowing that she would give breaks to other people,
7 and that's why I wanted to make sure who I was
8 listening to.

9 Fred told me I have to listen to Tammie
10 because she was my boss, and I supposed to do what
11 she says.

12 Q. We'll get there, but Tammie's giving
13 you a break was not in the contract, correct; it was
14 a gift from Tammie?

15 A. I don't know that. I can't answer
16 that.

17 Q. Did Fred say you're not entitled to a
18 break because there's nothing in your engagement that
19 gives that?

20 A. To be honest, I barely speak to Fred
21 about breaks and stuff like that.

22 Q. In fact, the entire time you only spoke
23 to him about a break once; right?

24 A. She took it away from me, so I talked
25 to Fred.

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1 Q. Once in the entire time you were
2 providing services?

3 A. She would take it away from me like
4 twice a week sometimes.

5 ARBITRATOR MASUCCI: Wait. Listen to
6 the question.

7 Q. You spoke to Fred. You reported to
8 Fred on one occasion in the entire time you were
9 providing delivery services that Tammie had taken
10 away your break; correct?

11 A. Yes.

12 Q. In that conversation, did Fred say what
13 break are you talking about, it's not in our
14 engagement?

15 A. No, he didn't say that.

16 Q. According to you, he said she's your
17 boss?

18 A. Yes.

19 Q. Did you respond to him, well, I'm an
20 independent contractor for you, here's my contract,
21 what are you talking about?

22 A. To be honest, I just say why not, why
23 she not giving me a break. He said well, you have to
24 listen to her. And that was the end of the
25 conversation.

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1 Q. The break was a half an hour; right?

2 A. Yes.

3 Q. So if you were a half hour late coming
4 to work, you were not fulfilling your engagement, and
5 she took that back in the half hour by not giving you
6 a break; is that right?

7 A. Yes.

8 ARBITRATOR MASUCCI: Why don't we take
9 a break now.

10 (After a luncheon recess was taken, the
11 following was had:)

12 A F T E R N O O N S E S S I O N

13 CONTINUED EXAMINATION

14 BY MR. MARKS:

15 Q. Do you recall specifically what
16 information you put on your 2014 tax return?

17 A. No.

18 Q. I didn't think so.

19 I want to show you your tax return. I
20 don't think it's necessary to offer this in evidence.
21 I don't think it's -- we don't need this hanging
22 around in some kind of exhibit.

23 So I will just show it to you, and then
24 I would ask you to confirm aspects of it. And then
25 we can put it away, unless you want me to introduce

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1 it.

2 ARBITRATOR MASUCCI: Why don't you see
3 what he wants to do.

4 MR. POTASHNICK: Let's see how it goes.

5 MR. MARKS: I will show this to the
6 witness.

7 Q. Miss Lucio, I show you what has been
8 produced by your counsel as a 2014 tax return.

9 A. Okay.

10 Q. Can I direct your attention to, I don't
11 know, like five pages in. It's on Schedule C.

12 On Schedule C, could you tell me how
13 much income you reported for your profit or loss from
14 business? It would be on line 1.

15 A. \$7,734.

16 Q. The expenses which are on line 28, can
17 you tell me how much those are?

18 A. Expenses?

19 Q. Yes.

20 A. \$5,916.

21 Q. Then three pages from the last is a
22 Form 1099 Miscellaneous for the Subcontracting
23 Concepts, LLC.

24 Can you tell me how much income is
25 designated on your Form 1099 Miscellaneous?

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1 A. \$7,733.63.

2 Q. That was payable to you from
3 Subcontracting Concepts, LLC; correct?

4 A. Yes.

5 Q. I don't have anything further with the
6 document. I just wanted those documents in the
7 record.

8 MR. MARKS: Do you want the document in
9 the record?

10 MR. POTASHNICK: No.

11 Q. Can you tell me, Miss Lucio, what time
12 it was that you were -- what time of day it was that
13 you were granted a break by 10?

14 A. It was by the time that I needed to
15 pick up my son.

16 Q. What time was that?

17 A. It was 1:30.

18 Q. Your break would be how long? 1:30 to
19 what?

20 A. 1:30 to 2.

21 Q. In that time, where was your son's
22 school?

23 A. It's about five miles from where Parts
24 Authority is.

25 Q. You would drive the five miles to

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1 school, pick him up and bring him to your house? How
2 far was that from the school?

3 A. I would drop him off in a Waffle House,
4 the corner of my house. So I can tell him to go home
5 from there. It was like let's say 10 minutes
6 walking.

7 Q. I'm more interested in you than he.
8 How far was the Waffle House from the
9 school?

10 A. From the school in -- it was like 15
11 minutes.

12 Q. And then how far was the Waffle House
13 back to -- if you went back to the Parts Authority
14 store or warehouse, how far was that?

15 A. The same. The same. The same
16 distance, like 15, 10 to 15 minutes.

17 Q. How many miles; do you know?

18 A. No, I don't know.

19 Q. When you were out making a delivery
20 run, Parts Authority had no tracking device; correct?

21 A. No.

22 Q. So was there anything that prevented
23 you from picking up your son at that time, dropping
24 him at the Waffle House and then completing your run?

25 A. No. I have to get Tammie approval in

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1 order to do that.

2 Q. She wouldn't know if you did it without
3 her approval; correct?

4 A. No, because she would call me.

5 Q. How would she know to call you?

6 A. She will tell me where I was and what I
7 was doing.

8 Q. It's your testimony, is it not, that
9 she called you several times a day on your phone?

10 A. Yes.

11 Q. And she texted you as well; right?

12 A. Sometimes.

13 Q. Most times; right?

14 A. No. She will call me most of the time.

15 Q. On page 15 of your deposition I asked
16 you at line 15: And how many times did Tammie text
17 you? Answer: We communicate almost every day.

18 Question: By text message? Answer: Yes.

19 So she texted you every day you're
20 saying; right?

21 A. She would do both.

22 Q. She texted you every day; correct?

23 A. Yes.

24 Q. And in this proceeding you were asked
25 to produce those text messages?

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1 A. Yes.

2 Q. And you didn't produce a single text
3 message from Tammie; correct? Do you have any text
4 message from Tammie?

5 A. I think I did give some to my lawyers.

6 Q. If you gave them some, how many is
7 that?

8 A. Just I think a couple. I don't
9 remember.

10 Q. The text messages you gave counsel and
11 produced to us were to Monica; correct?

12 A. Yeah. Monica was the dispatcher and
13 like I say --

14 Q. And you didn't produce any text
15 messages to Tammie?

16 A. She would usually call me.

17 Q. But she texted you every day?

18 A. She would call me every day too.

19 Q. Would you agree that most of the time
20 that you were providing services through Diligent to
21 Parts Authority, you were off Parts Authority
22 premises in your own vehicle?

23 A. Yes.

24 Q. Would that be like 85 percent of the
25 time you're off premises in your own vehicle?

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1 A. No. 95 percent.

2 Q. 95 percent. The other 5 percent, you
3 were waiting for more deliveries?

4 A. No. That was -- that counts like
5 8 a.m. to 6 p.m., or sometimes after that.

6 Q. My question is, and maybe we got again
7 off on the wrong foot, but I asked you how much time
8 was spent off the premises. I said 85. You said 95.

9 A. Yeah, 95.

10 Q. Mathematically that would leave
11 5 percent of your time on the premises.

12 A. What does premises mean?

13 Q. Their building and the warehouse.

14 A. I was 95 percent in the warehouse, and
15 I was 5 percent picking up my kids and going home.

16 Q. You did not spend 95 percent of your
17 time inside the Parts Authority warehouse, did you?

18 A. No. I was --

19 Q. On the road making deliveries?

20 A. Yes.

21 Q. So what percentage of your time was
22 spent in the warehouse as opposed to being outside
23 the warehouse making a delivery, picking up your son,
24 whatever it is you were doing?

25 A. Just to go in and pick up the

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1 deliveries, probably like -- or sometimes just wait
2 for the delivery and hope that they had some chairs
3 there.

4 MR. MARKS: Correct me if I'm wrong.
5 The testimony was if they had some chairs, she
6 would sit down inside.

7 A. I would say 10 percent.

8 Q. While you were waiting for deliveries,
9 I think you testified at deposition that you would
10 just look at your phone and do stuff like that?

11 A. No.

12 Q. What would you do while you were
13 waiting for a delivery?

14 A. I was just waiting there.

15 Q. You weren't looking at your phone?

16 A. They had like a little break room. I
17 would sit down over there, and then Tammie would call
18 me and say hey, you have a delivery. So I came out
19 and got the run.

20 Q. The question is: While you were in the
21 break room waiting for something to happen, you would
22 not be on your phone looking at your phone?

23 A. Only when I had a call. I have to ask
24 Tammie can I use my phone, and she would say yes.

25 Q. While we're getting that, when you

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1 spoke with Fred about Tammie not giving you a
2 break --

3 A. Yes.

4 Q. -- do you recall when that conversation
5 took place?

6 A. I don't remember the day.

7 Q. Was it in the beginning of your
8 services or towards the end of your services?

9 A. It was in the middle of the services.

10 Q. That conversation was by phone;
11 correct?

12 A. Yes.

13 Q. I want to be clear, maybe I
14 misunderstood what you said before.

15 When you missed a day of the
16 engagement, you missed a day, you didn't go anywhere;
17 correct --

18 A. Mm-hmm.

19 Q. -- you called Tammie and not Fred?

20 A. I called Fred and then I called Tammie.

21 Q. You called Fred first?

22 A. Yes.

23 Q. And Fred said to call Tammie?

24 A. I would let Tammie know that I was
25 going to be off that day.

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1 Q. Why would you do that?

2 A. Because she needed to know.

3 Q. Why didn't you call Fred?

4 A. I already speak to Fred. Then Fred

5 said here, prove it. So they both have to

6 communicate about me being off.

7 Q. Let me direct your attention to page 86
8 of your transcript, line 13.

9 A. Okay.

10 Q. Line 13: Talking about the break room,
11 was there a TV or something in the break room?

12 Answer: No, just like we were playing with our
13 phones or just, you know, making phone calls if we
14 needed to.

15 Is that true?

16 A. Yeah, it was true, only if we needed
17 to.

18 ARBITRATOR MASUCCI: Was it true that
19 you were playing with your phones when you were
20 in the break room?

21 A. I had my phone in my hand, and I just
22 have to -- if I needed to make a phone call or if
23 somebody text me, I would just look at a text.

24 Q. Page 90 of your deposition, line 19,
25 Question: And when you missed a day, did you do

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1 something? Did you call Fred? What did you do?

2 MR. POTASHNICK: I object to that
3 question. It's compound.

4 Q. Answer: I have to call Fred. You
5 didn't -- when I asked you what you had to do, you
6 didn't tell me you had to call Tammie, did you?

7 A. I called Fred and Fred communicate to
8 Tammie I was going to be off that day.

9 Q. At some point in time while you were
10 engaged to provide coverage to Parts Authority for
11 Diligent, you made a complaint about the amount of
12 your compensation; correct?

13 A. Yes.

14 Q. You made that complaint to Fred of
15 Diligent; correct?

16 A. What do you mean?

17 Q. It's Fred who you called and said I'm
18 not getting paid enough money?

19 A. Yes.

20 Q. You didn't call Tammie or anyone at
21 Parts Authority; correct?

22 A. No.

23 Q. No, you did not?

24 A. No, I didn't.

25 Q. In fact, during the entire time you

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1 were working there, you never made a complaint to
2 Parts Authority about your pay; right?

3 A. No.

4 Q. That's because you understood that it
5 was Diligent who controlled your pay and not Parts
6 Authority; is that right?

7 A. Yes.

8 Q. When you're arrived in the morning at
9 the Parts Authority store, and assuming -- how much
10 time would there be if you arrived at 8 before you
11 had a delivery to make?

12 A. Right away.

13 Q. Every day it was right away?

14 A. Yeah, because I already had the -- the
15 orders, last night they drop them off for people that
16 ordered to have the parts in the morning. They would
17 have it ready. They will be ready for delivery.

18 Q. So every day it was 8 o'clock you would
19 go?

20 A. Yes.

21 Q. Never 8:05 or 8:10?

22 A. No. Tammie had asked.

23 Q. You don't have any records of the times
24 you made deliveries; correct?

25 A. No.

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1 Q. You have no records of the days you
2 worked; correct?

3 A. No. Just the paystub when I got paid.

4 Q. You have no record of the hours you
5 worked; correct?

6 A. I know I work 8 a.m. to 6 p.m. and
7 sometimes after that if I had a late run.

8 Q. And Sometimes you were late to work.

9 But my question is: You have no record
10 of that; correct?

11 A. No.

12 Q. The first time you heard about Parts
13 Authority was when your brother-in-law Renan
14 mentioned the company to you; correct?

15 A. Yes.

16 Q. Before you met with Fred, you hadn't
17 even spoken to anyone at Parts Authority?

18 A. No.

19 Q. No one at Parts Authority ever gave you
20 any reason to believe that Fred was a manager or
21 employee of Parts Authority; did they?

22 A. No.

23 Q. Fred never told you he was a hiring
24 agent for Parts Authority; right?

25 A. No.

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1 Q. Tammie never said that she's Fred's
2 boss; did she?

3 A. No.

4 Q. Tammie never said that she's your boss;
5 did she?

6 A. I was listening to Tammie.

7 Q. I understand that. But she never used
8 those words; right? Your understanding that she was
9 your boss was something that Fred had told you;
10 correct?

11 A. Yeah. Fred told me she was my boss.

12 Q. No one at Parts Authority told you that
13 Fred worked for Parts Authority at all?

14 A. No.

15 Q. I think you testified he wasn't there a
16 lot?

17 A. He wasn't there a lot.

18 Q. When you stopped providing delivery
19 services to Parts Authority in October, you told
20 Fred; right?

21 A. I called Tammie.

22 Q. You told Fred; right?

23 A. And Fred, yes.

24 Q. At that time did Fred offer you other
25 engagement opportunities with other customers?

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1 A. No.

2 Q. Do you know what Parts Authority Laurel
3 Avenue, LLC is?

4 A. No.

5 ARBITRATOR MASUCCI: Laurel,
6 L-A-U-R-E-L?

7 MR. MARKS: Yes.

8 Q. Do you know what Parts Authority
9 Partners Franklin Avenue LLC is?

10 A. No.

11 Q. Do you know what Parts Authority-WAW
12 LLC is?

13 A. No.

14 Q. Do you know what PA Austin LLC is?

15 A. No.

16 Q. Do you know what Parts Authority
17 Georgia LLC is?

18 A. No.

19 Q. Did you ever speak to Yaron Rosenthal?

20 A. No.

21 Q. Do you know if he ever told you to do
22 anything?

23 A. No.

24 Q. Can you tell me why you're suing those
25 companies and that individual as a respondent?

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1 MR. POTASHNICK: I object for a couple
2 of reasons. Calls for a legal conclusion.
3 Secondly, there's already been an agreement
4 between the sides here about who we would
5 proceed against as a respondent in this claim.

6 MS. STILLER: I don't think it was on
7 this case.

8 MR. POTASHNICK: I think it was on
9 both.

10 MS. STILLER: At any rate, if you're
11 not going to be proceeding against those
12 entities that he just mentioned, and you're
13 stipulating to that, then that's fine.

14 MR. POTASHNICK: That wasn't the
15 agreement either. The agreement was that we'd
16 limit the entities that as named as respondents
17 with the respondents' agreement that they would
18 be able to pay any possible recovery in this
19 case.

20 MS. STILLER: Why are you objecting to
21 the question? That stipulation has nothing to
22 do with his ability to question about those.

23 ARBITRATOR MASUCCI: I'm confused,
24 because on the caption and all the papers, it
25 just says Susana Lucio versus Parts Authority

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1 LLC on these pages.

2 MR. MARKS: I don't know what you have.
3 If you look at the Statement of Claim and the
4 deposition transcript, it's a little bit
5 broader.

6 ARBITRATOR MASUCCI: Which I know.

7 MR. MARKS: And The Statement of Claim,
8 which is a Joint Exhibit. Maybe we can
9 straighten that out.

10 MR. POTASHNICK: To answer your
11 question, I'm objecting because it was our
12 understanding that that would apply to both of
13 the claims. And to cross examine a lay witness
14 on something that we've agreed about seems to
15 undermine the prior agreement that we had.

16 MS. STILLER: Number 1, we didn't have
17 an agreement on this case. Number 2, you're the
18 one who chose to sue all of those entities, and
19 there either was a reason or wasn't a reason
20 that your witness should know about with respect
21 to suing them. If there is no reason, you're
22 stipulating them out of the case, that's fine.
23 If you're not stipulating them out of the case,
24 then as far as I know, they are still in the
25 case and, therefore, the questioning is

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1 permissible.

2 Again I don't mean to step on your
3 toes.

4 MR. MARKS: Or make a ruling for the
5 arbitrator, whether it's permissible or not.
6 That's your call.

7 ARBITRATOR MASUCCI: Why don't we hold
8 that question. I think the two of you need to
9 speak and clarify who the parties are in this
10 case.

11 MS. STILLER: I don't think he's saying
12 that there is any stipulation that those -- can
13 I finish.

14 I don't think he's saying that there's
15 any stipulation in this case, that the entities
16 that Mr. Marks just mentioned are not parties to
17 the case.

18 ARBITRATOR MASUCCI: Are you
19 stipulating that all of these entities are or
20 are not parties to the case?

21 MR. POTASHNICK: We're stipulating to
22 something nuanced there. What we stipulated to
23 was that we would proceed only against
24 particular entities to eliminate the issue of
25 all these other entities out there, and for them

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1 to bring back all these other entities as a
2 subject of cross-examination at this stage I
3 think is disingenuous.

4 MS. STILLER: Number 1, I'm not sure
5 what you said. Number 2, it's not my
6 understanding of the stipulations that I believe
7 was only in the Johnson case.

8 So you may be correct that we do need
9 to speak further, and probably reserve any
10 rights with respect to that area of questioning.

11 ARBITRATOR MASUCCI: Hold that
12 question.

13 When we finish with this witness,
14 because I have a list of questions too, then
15 we'll take a break. You guys meet and decide
16 what you need to decide, and at that point we'll
17 figure out whether or not the question should be
18 asked.

19 MR. MARKS: Okay. And I would only say
20 this at this point. I'm trying to be
21 ingenuous, not disingenuous.

22 The stipulation did not apply to Yaron
23 Rosenthal, so the question is not the individual
24 allegations that Mr. Rosenthal is the employer
25 of this claimant, I think, are appropriate

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1 regardless. I think she's answered those
2 questions.

3 ARBITRATOR MASUCCI: That's fair.

4 MR. POTASHNICK: To the extent it
5 applies to your run, I still interject an
6 objection on the basis that it calls for a legal
7 conclusion.

8 ARBITRATOR MASUCCI: I don't think he
9 asked a legal question. He asked if she knew.

10 MR. MARKS: My last question was why is
11 she suing them.

12 MR. POTASHNICK: I think that's
13 different.

14 ARBITRATOR MASUCCI: That is different.

15 MR. MARKS: That's why I told you. I
16 will withdraw that question.

17 ARBITRATOR MASUCCI: Thank you.

18 CONTINUED EXAMINATION

19 BY MR. MARKS:

20 Q. To your knowledge, you have no known
21 relationship with Mr. Rosenthal?

22 A. No.

23 Q. You don't know whether he's had any
24 input into setting the policy that Parts Authority
25 would contract with Diligent; correct?

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1 A. No.

2 MR. MARKS: Two-minute break while I
3 confer with co-counsel outside, or did you want
4 to ask questions of the witness?

5 ARBITRATOR MASUCCI: Do you have any
6 redirect?

7 MR. POTASHNICK: Just a little bit.

8 ARBITRATOR MASUCCI: I have a list of
9 questions I would rather ask before you break.

10 MR. MARKS: I just wanted to see if we
11 had any more questions to ask.

12 ARBITRATOR MASUCCI: Then let's take a
13 two-minute break.

14 (At this time, a brief recess was
15 taken.)

16 CONTINUED EXAMINATION

17 BY MR. POTASHNICK:

18 Q. Miss Lucio, Mr. Marks asked you about
19 the company called ATS that you performed work for
20 prior to your work for Parts Authority.

21 Do you recall that?

22 A. Yes.

23 Q. Okay. What were the differences in the
24 way that ATS treated you from the way that Parts
25 Authority treated you?

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1 A. Well, I have -- I had more freedom. I
2 would be able to -- I would not ask. I would just
3 tell the guy I'll come back. I'll go get my
4 daughter, and then they wouldn't say anything. I
5 would come out with more freedom working for them.

6 Q. Did you have to ask anybody's
7 permission to do your tasks?

8 A. No.

9 Q. Could you set your own hours?

10 A. Yes.

11 Q. Did you have a supervisor at ATS?

12 A. No.

13 Q. Did you have to ride along for training
14 with anybody at ATS?

15 A. No.

16 Q. Did ATS put time limits on your
17 deliveries?

18 A. No.

19 Q. Did ATS try and hurry your deliveries?

20 A. No.

21 Q. When you prepared your 2015 taxes, did
22 you have any Parts Authority invoices to customers?

23 A. No.

24 Q. If you were five minutes late, would
25 Tammie take away an entire 30-minute break?

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1 A. Yes.

2 Q. Did she do that to you?

3 MR. MARKS: Could we have less leading
4 questions.

5 ARBITRATOR MASUCCI: Just rephrase the
6 questions in a way that you're not giving the
7 answers.

8 Q. Did you consider your workplace at
9 Parts Authority to be Parts Authority's facility in
10 Roswell or your car?

11 MR. MARKS: Same objection.

12 ARBITRATOR MASUCCI: I don't know what
13 the question is.

14 MR. MARKS: It's certainly designed to
15 say yes to the question.

16 MR. POTASHNICK: It's either or.

17 ARBITRATOR MASUCCI: Could you ask the
18 question, please.

19 Q. What did you consider your workplace to
20 be when you worked for Parts Authority's?

21 A. I would drive to the location of Parts
22 Authority and park my car there, and pick up the
23 delivery and start working.

24 Q. Did you consider that your workplace?

25 A. Yes. That's why I went every day.

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1 Q. You were asked about some text
2 messages. Can you take a look in your binder you
3 have here at number 15, please.

4 What are these documents that we're
5 looking at that are in Joint Exhibit 15?

6 A. These are the ones that Monica, the
7 dispatcher, send it to me. At one point I wanted to
8 go home two minutes to six, and she would text me
9 this message about why that I was -- I was leaving at
10 5:58. She told me that it was not -- she say it is
11 5:58, not 6 p.m. I did not dismiss you. Do not ask
12 for any more favors. That's the second time you did
13 this. You doing this or you do that.

14 MR. POTASHNICK: That's all I had.

15 MR. MARKS: Can I just ask one question
16 about the text message that's now been offered?

17 ARBITRATOR MASUCCI: Yes.

18 FURTHER EXAMINATION

19 BY MR. MARKS:

20 Q. Can I ask why, or if you know why, a
21 text message was sent at 4:59 talking about something
22 that would happen an hour later, if that's what she's
23 talking about?

24 A. 4:59?

25 Q. Yes. So it says that it's 5:58, not

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1 6 p.m., and that message is sent at 16:59, which
2 converting from military time is 4:59. So you asked
3 an hour in advance whether you could leave at 5:58?

4 A. No.

5 Q. So you don't know what that is?

6 A. I don't understand.

7 MR. FREI-PEARSON: May I clarify
8 something?

9 ARBITRATOR MASUCCI: Yes.

10 MR. FREI-PEARSON: So there were issues
11 downloading stuff from her phone, and I believe
12 you're in a different time zone than here;
13 correct?

14 ARBITRATOR MASUCCI: Georgia is the
15 same as New York.

16 MR. FREI-PEARSON: I think there was
17 some sort of a timezone issue. We had some
18 issues getting stuff off of the phone.
19 Certainly no one was doctoring anything.

20 ARBITRATOR MASUCCI: The question was
21 related to the fact that on the text messages it
22 looks like the text was actually sent at 4:59.

23 MR. FREI-PEARSON: And what I'm
24 suggesting, and I'm not a hundred percent sure
25 of that, but there were issues getting stuff off

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1 her phone. So wherever the phone was retrieved
2 from, she sent the phone to our office and then
3 we had to get some things off of it.

4 I'm not sure that the hours were
5 correct after all of that happening, but the
6 time stamps are exactly on point.

7 ARBITRATOR MASUCCI: You think when you
8 downloaded the text message, that the technology
9 changed the time?

10 MR. FREI-PEARSON: That would be my
11 informed speculation. I'm not certain of that.
12 That would be the explanation that makes the
13 most sense to me.

14 ARBITRATOR MASUCCI: I don't understand
15 it myself, but --

16 MR. FREI-PEARSON: It's all magic to
17 me.

18 ARBITRATOR MASUCCI: All right. I have
19 about six questions.

20 You testified that Tammie did not work
21 on Saturday?

22 MS. LUCIO: Yes.

23 ARBITRATOR MASUCCI: Who actually gave
24 you your assignments on Saturday if she wasn't
25 there?

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1 MS. LUCIO: It was the supervisor,
2 dispatcher.

3 ARBITRATOR MASUCCI: It was Monica?

4 MS. LUCIO: It was Monica, yes. And
5 before Monica was another person named -- it was
6 another guy before Monica.

7 ARBITRATOR MASUCCI: So when that
8 person gave you your assignments, routes, did
9 they also supervise you in the same way, meaning
10 that if they thought you were taking longer than
11 you should, did they call you, did they follow
12 up with you to find out where you were located,
13 why you were taking too long to make a delivery
14 or to load trucks?

15 MS. LUCIO: Not quite. He didn't keep
16 up with that because basically Tammie was the
17 one who was the warehouse manager, so everybody
18 do the right thing when she was there.

19 You see what I'm saying? She was like
20 basically the boss. She was the boss.

21 ARBITRATOR MASUCCI: So it was more
22 relaxed on Saturday when she wasn't there?

23 MS. LUCIO: Basically, yes.

24 ARBITRATOR MASUCCI: When you were
25 working for ATS, what was different about your

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1 job versus when you are now working for Parts
2 Authority, meaning that you testified that you
3 had to have the -- you had to check the invoices
4 to make sure you had the correct parts. You
5 testified that when you went to the customer's
6 site, they had to sign off the invoice.

7 What was different about the procedures
8 in the two?

9 MS. LUCIO: Well, they have --
10 basically they have me to -- they have their
11 order ready and they already scanned it, the
12 parts and everything. Which I have to do that
13 in Parts Authority. I just pick up my run and
14 go.

15 But if I have like to be at a certain
16 place, I would go sometimes and pick up my
17 daughter, drop her off, and come back to work.
18 I have more freedom. I have more freedom in
19 ATS.

20 ARBITRATOR MASUCCI: What I'm trying to
21 ask is not about the freedom, but you said that
22 there was a procedure that you had to follow
23 that CJ actually showed you what the customer
24 needed to sign, how the delivery itself was
25 done. Was there a different procedure that you

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1 followed?

2 MS. LUCIO: It was the same, it was
3 just that I was not calling like all the time.
4 It was exactly the same. I would make sure I
5 have the right parts and get in my car and
6 drive.

7 But nobody was calling me or telling me
8 oh, you have to be here a certain time or you
9 have to be here at this place. I would just
10 drive, come back, and that's how my day went.
11 If I needed to do something else, I would come
12 and say look, I will be back in an hour. I need
13 to do something. They'll say okay.

14 ARBITRATOR MASUCCI: Okay. When you
15 were working for ATS, did you ever advertise for
16 your services?

17 MS. LUCIO: No.

18 ARBITRATOR MASUCCI: So whether it was
19 ATS, or Diligent, or Parts Authority, you didn't
20 advertise for your services?

21 MS. LUCIO: No.

22 ARBITRATOR MASUCCI: In J1, it's the
23 list of your payments. No, that's not J1. It's
24 8. All of these amounts are very different.
25 Why?

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1 MS. LUCIO: Because on this one, like
2 the first line, the first week I worked for
3 Parts Authority, that's how much they paid.
4 That was the first -- you know, it was -- if you
5 notice, I start on May 11, 2015, which is the
6 payroll. They pay the guys on the 5th. So I
7 only got basically the rest of the pay day which
8 was until the 20th.

9 ARBITRATOR MASUCCI: So on the
10 agreement it says the pay was \$2,300. For what
11 period? Is that a month?

12 MS. LUCIO: Yes, a month.

13 ARBITRATOR MASUCCI: So \$1,037.54 is
14 for half a month; right?

15 MS. LUCIO: Yes.

16 ARBITRATOR MASUCCI: My math is that
17 it's \$1,150. What's the difference between
18 \$1,150 and \$1,037 if it's \$2,300 a month.

19 MS. LUCIO: Because they took -- they
20 would take money away.

21 ARBITRATOR MASUCCI: There was some
22 withholdings?

23 MS. LUCIO: Yes. Yes. They will
24 charge you for giving you the job.

25 MS. STILLER: Can we define what they

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1 did.

2 ARBITRATOR MASUCCI: It's Diligent. So
3 this one -- what I'm trying to ask is that there
4 were times --

5 MR. MARKS: I will say this. We will
6 put on testimony about how the pay is
7 calculated.

8 ARBITRATOR MASUCCI: Thank you. I'm
9 trying to figure out where the differences are.
10 There's testimony that there were days that you
11 did not work, and I don't know. I'm trying to
12 reconcile why there's the differences in pay.

13 Earlier there was a question about
14 taking another job, and I think I answered for
15 you, but I want to clarify that. Although you
16 said that you worked from 8 to 6 every day,
17 there were days that you needed to take off for
18 your family.

19 MS. LUCIO: Yes.

20 ARBITRATOR MASUCCI: Was there anything
21 stopping you from accepting another job and
22 telling Diligent I'm not working on Friday
23 without an explanation and going to work for
24 another job?

25 MS. LUCIO: I would not -- I would

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1 not -- if I asked the Diligent guy that I wanted
2 to be off a certain day because I needed to do
3 something else, he would say why? Why are you
4 asking for days off? We needed you to be
5 working.

6 Diligent would tell me I'm losing
7 money. I'm losing money because you're
8 basically off. So I would just go ahead and
9 work.

10 ARBITRATOR MASUCCI: You also testified
11 that -- I think this is what you testified --
12 that if you needed a day off for family reasons,
13 that you would call Fred; right?

14 A. Yes.

15 ARBITRATOR MASUCCI: And that he would
16 then talk to Tammie and tell her that you needed
17 a day off.

18 MS. LUCIO: Yes.

19 ARBITRATOR MASUCCI: Why on the other
20 hand -- and you may or may not know this, if
21 Tammie took -- if Tammie took away your break,
22 you would call Fred, and Fred would then say
23 tell Tammie, because she's your boss.

24 MS. LUCIO: Yes.

25 ARBITRATOR MASUCCI: Why was there a

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1 difference? If you were to take a day off, why
2 didn't Fred say -- I know I'm asking you to
3 think about what is in Fred's mind, but why did
4 Fred not treat that request for a day off the
5 same way.

6 MS. LUCIO: To be honest, I don't know.
7 He told me.

8 ARBITRATOR MASUCCI: Those are my
9 questions. Anything else?

10 MR. MARKS: I'm okay.

11 ARBITRATOR MASUCCI: All right. So
12 then let's take 10 minutes.

13 (At this time, a brief recess was
14 taken.)

15 M I C H A E L E A R N E R, a Witness herein,
16 having been first duly sworn by Terri
17 Fudens, a Notary Public of the State
18 of New York, was examined via
19 videotape and testified as follows:

20 ARBITRATOR MASUCCI: What is your name?

21 MR. EARNER: My name is Michael Patrick
22 Earner.

23 DIRECT EXAMINATION

24 BY MR. WHITE:

25 Q. Mr. Earner, thank you for taking the

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1 time to be here today.

2 Could you start with what is your
3 educational background?

4 MR. MARKS: The nature of this
5 testimony is an expert witness testimony, and we
6 have not been provided with any witness
7 disclosures, and we object to the continuous
8 testimony of this witness.

9 MR. WHITE: To be clear, plaintiff's
10 position is that Mr. Earner is here as a lay
11 witness. He has not exercised any sort of
12 expert judgment on any of the things he's done.
13 He's summarized and collated the luminous data,
14 but he has not exercised any sort of expertise.

15 ARBITRATOR MASUCCI: This data is?

16 MR. WHITE: It's a conglomeration of
17 all the documents that have been produced and
18 the invoices. I believe we produced as J1 the
19 sample that one invoice sheet, almost a thousand
20 of those were produced.

21 As will come out through his testimony.
22 Mr. Earner pulled data from and summarized
23 almost a thousand invoices, as well as the list
24 of checks and other inputs that were only
25 provided by counsel.

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1 ARBITRATOR MASUCCI: These invoices are
2 what?

3 MR. WHITE: Your Honor can turn to
4 Joint Exhibit J-1. All the invoices are joint
5 exhibits.

6 MS. STILLER: These were invoices that
7 were produced by Parts Authority, so we produced
8 on disk a number -- over a thousand pages of
9 invoices, delivery invoices. And just for the
10 sake of not having over a thousand pages of
11 documents, we agreed that we could use a
12 representative invoice which is what this is.
13 And the other invoices are on disk or thumb
14 drive.

15 MR. WHITE: Yes.

16 ARBITRATOR MASUCCI: So these are
17 invoices relating to the deliveries that were
18 made?

19 MS. STILLER: Right.

20 MR. MARKS: And from those documents,
21 this witness has done something with exhibits,
22 drawn -- either made a demonstrative exhibit, so
23 we don't need his testimony, or made a
24 conclusion which would make it, since he has no
25 personal knowledge of this case, make it expert

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1 testimony. I know he's not bringing an opinion
2 to the case, perhaps, but we don't know what his
3 skill set is. We don't know anything about how
4 effective he was in making those conclusions.

5 This information should have -- I did
6 ask for it, and they told me he's not an expert,
7 so they're not giving it to me. It should have
8 been provided. There was a time for disclosure.
9 I could have deposed him, or something, had it
10 been in advance, and I may have chosen it.

11 I'm now being deprived of that
12 opportunity.

13 MR. WHITE: Claimant's position is
14 still that Mr. Earner is a lay witness and was
15 not subject to any disclosure for any expert
16 witnesses.

17 Under Federal Rule of Evidence 1006,
18 there's voluminous case law that it does not
19 make you an expert witness to summarize
20 voluminous data. We can cite to case law if
21 your Honor would like.

22 MR. FREI-PEARSON: In similar
23 arbitrations where people like Mr. Earner have
24 testified and summarized voluminous data that
25 have been allowed in arbitrations and also court

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1 cases. This is a lay witness who is reviewing
2 voluminous data and summarizing it for specific
3 rules and Federal Rules of Evidence that allows
4 lay witnesses to do this in court. So certainly
5 it should be allowed in arbitration.

6 If your Honor has concerns, it should
7 be apparent by the end of this testimony that
8 Mr. Earner is not being offered in an expert
9 capacity, and that should be clear by the time
10 he's done testifying. He just performed simple
11 math at our direction in order to calculate
12 damages, and that's how damages are calculated
13 in all wage cases.

14 ARBITRATOR MASUCCI: I'm going to allow
15 the testimony. Let's proceed and see where it
16 goes.

17 Have him describe his background, where
18 he's worked, what his skill set is so we at
19 least have that.

20 CONTINUED EXAMINATION

21 BY MR. WHITE:

22 Q. Mr. Earner, I'll ask you again. Could
23 you start by what is your educational background?

24 A. Certainly. I have a Bachelor's of Arts
25 degree in Criminal Justice. I also have a Masters in

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1 Business Administration as well as a JD and LLM and
2 Taxation from Suffolk University.

3 I've also completed graduate course
4 work in forensic psychology and attended a
5 certificate program at MIT in artificial intelligence
6 and business applications.

7 Q. Thank you. What is your professional
8 background?

9 A. So professionally I probably start
10 after my first year of college. I actually started
11 working as a delivery driver for an online grocery
12 store. I worked there for a few years. Started to
13 really do well as a driver.

14 And one day I was walking by where they
15 were kind of planning all the delivery routes and
16 stuff like that. And I realized there was a whole
17 bunch of people sitting much like this, sitting at a
18 table with sheets and passing stuff back and forth.

19 When I was in high school, I learned
20 about different computer programs, and I said hey,
21 there's probably some software that will help you
22 guys do this. I didn't actually do anything with it,
23 just made a recommendation. That simple
24 recommendation kind of caught the eye of some of the
25 senior management in the online grocery store. When

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1 the operation expanded in the late '90s down to the
2 Washington DC area, they asked me if I wanted to go
3 there as a transportation manager.

4 So that brought me down to DC. I spent
5 a couple of years in DC. I happened to be in
6 Washington, DC on September 11th. Like most people
7 at the time I was kind of impacted by it. I think
8 that's fair to say across the United States.

9 I had a younger brother who joined the
10 Army shortly after September 11. About a year and a
11 half later my brother deployed to Afghanistan. At
12 that the point I was, you know, in my mid 20s, felt
13 extremely guilty that my younger brother was willing
14 to really put his life on the line for the United
15 States, and I wasn't. And I decided to join the
16 Army.

17 I joined the Army of the absolute
18 lowest levels as an E1 private in the infantry and
19 wanted to join a unit to go and do what my brother
20 was doing, which was fighting.

21 So I was actually -- after I graduated
22 from training, I actually got assigned my first duty
23 station in Fort Drum, New York, here in upstate,
24 New York. I deployed to Afghanistan and I was
25 injured during a combat mission in Afghanistan and

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1 medevaced and ended up at Walter Reed Army Medical
2 Center. I spent about five months in recovery at
3 Walter Reed.

4 While I was there, I was actually
5 recruited into a special branch of the Army called
6 CID, the Criminal Investigation Division. I'm not
7 sure if it still is, but at the time it was the only
8 branch or the only arm of the Army that you couldn't
9 get into through a recruiter. You had to actually be
10 recruited from the ranks.

11 So I went through -- I was selected to
12 start an internship. I completed a one year
13 internship as a criminal investigative intern and
14 then ultimately was selected for a special engine
15 course and spent seven months -- six and a half
16 months training in Missouri to become certified as a
17 special agent.

18 While I was in training they did, you
19 know, testing and interviews, and I was one of two
20 people from my class selected for kind of a special
21 duty assignment, and I was sent to Fort Meed, which
22 is where NSA is. While I was at NSA, or working in
23 support of NSA, I was still a CID special agent. I
24 got involved in drug tracking and tracking the
25 movements of drugs and drug threats and things like

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1 that primarily. And I did a number of other
2 investigations.

3 After my time there at Fort Meed, I was
4 then transferred to South Korea where I was a field
5 agent, a supervisory special agent in charge of a
6 drug team and tracking. Really drug intelligence and
7 drug movements throughout that region.

8 I continued to have injuries, issues
9 with my injuries. And in 2012 I was offered the
10 opportunity to retire from government service, and I
11 accepted that as an agent. So I medically separated
12 from the Army. It ultimately didn't happen until
13 2013. And in 2013 is when I started law school. I
14 spent three years at Suffolk Law. Like I said, I
15 graduated with a JD, and I did an accelerated LLM and
16 focused my studies on legal technology innovation,
17 which is for theory type stuff.

18 And once I was in my last year of law
19 school, there was an individual named Gabe Miller,
20 who was the CEO. He was starting a national law
21 firm. And he reached out to the school and said
22 we're looking for somebody that understands business
23 technology, taxes, a whole bunch of stuff. And he
24 contacted the dean of the school.

25 Ultimately it resulted in me getting an

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1 interview with this individual. I was actually hired
2 as a contract employee. During my last year of law
3 school, I would do about 20 hours a week, and I
4 really kind of helped build sort of the
5 infrastructure. Not physically built it, but the
6 flow charts, and the logic, and how things should
7 move around the company. And I was initially hired
8 out of law school as a national partnership manager.
9 I wasn't an attorney yet. I had to take the bar
10 still.

11 Once I passed the bar exam, I became
12 Associate General Counsel and still had an
13 operational role. I ultimately was promoted to
14 Director of Operations, and then Chief Operating
15 Officer. I rose very quickly in that company.

16 The decision was made last September to
17 actually close Advocates United. And as I was
18 ramping it down, I had an opportunity to move over to
19 my present employer, which is Total Trial Solutions,
20 which is where I work now as the president of Total
21 Trial Solutions.

22 ARBITRATOR MASUCCI: Where did you get
23 your undergraduate?

24 MR. EARNER: Thomas Edison State
25 College.

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1 MR. MARKS: Since that took 15 minutes
2 to tell us what the qualifications are, I have
3 to wonder why someone with such tremendous
4 qualifications, and government service, and
5 knowledge, and degrees would be necessary to do
6 what we're now about to hear, which is I just
7 put this into a spreadsheet and did this. I
8 think that there's -- again, I repeat, this is
9 an expert witness. Clearly that's why they're
10 using him, because they could have used a
11 secretary to do what it is that this
12 individual -- what it is is being asked to do.
13 I think we're hiding it.

14 ARBITRATOR MASUCCI: Let's hear it.

15 Q. Just to pick up with what you had said
16 a moment ago, who is your current employer again?

17 A. Total Trial Solutions.

18 Q. Who owns Total Trial Solutions?

19 A. An individual named Andrew Finkelstein
20 is the majority owner, and a minority owner is an
21 individual named Michael Caputo.

22 Q. Is Andrew Finkelstein also one of the
23 partners in FBFG Law, plaintiff's counsel?

24 A. He is.

25 Q. Did that affect your work in any way in

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1 this matter?

2 A. No, not at all.

3 Q. Was there an opportunity for that to
4 affect your work in any way in this matter?

5 MR. MARKS: Objection. What does that
6 mean, opportunity? He's going to say no. What
7 does that mean?

8 You mean since they pay him and he pays
9 you, that's not an opportunity? Where are we
10 going with that?

11 Q. What does Total Trial Solutions do?

12 A. It helps law firms prepare for trial in
13 litigation and creates video assets, it creates
14 demonstrative aids, things like that.

15 Q. What do you generally do at Total Trial
16 Solutions?

17 A. I've only been there a few months, but
18 as the president, I direct the day-to-day
19 operations of the individuals that usually do this
20 type of work.

21 Q. So you don't usually do this type of
22 work?

23 A. No. I've never done it.

24 Q. Has Total Trial Solutions summarized
25 and presented data in connection with arbitrations in

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1 the past?

2 A. It has on four occasions that I know
3 of.

4 Q. Who normally performs that work; who
5 performed the work on those four occasions?

6 A. That was done by, she was a paralegal.
7 I believe Jennifer Kelly. She would -- she was the
8 individual that usually did it. She has moved on.

9 Before I even started working there she
10 had moved on. Normally it would be her or somebody
11 like her.

12 Q. Why did you do this work in this case
13 instead of the paralegal doing it?

14 A. I was just getting started, and this
15 was something that I knew I would be able to do, and
16 I just decided to take it on. I don't really have
17 any real motivation other than it was certainly
18 something that was within my ability and I was able
19 to do.

20 Q. Was the paralegal's name Kelly Kacey?

21 A. Kelly Kacey it was, yes.

22 Q. And was Miss Kacey ever designated as
23 an expert witness?

24 A. No, not at all.

25 Q. So what specifically did you do in

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1 filling that role that Miss Kacey had filled before?

2 MR. MARKS: Are we now on to what you
3 did in this case? Can we just ask that
4 question?

5 ARBITRATOR MASUCCI: We can.

6 Q. What did you do in this arbitration?

7 A. So I took the documents that were
8 provided, the invoice documents that were referenced
9 earlier. I extracted -- I used a web-based publicly
10 available software to extract very specific
11 information from the documents, and then I used
12 inputs to just display math.

13 Q. Up on the screen here, is this a page
14 from the spreadsheet you produced?

15 A. Yes.

16 Q. For clarity sake, because of Internet
17 connection issues, the spreadsheet itself is not
18 producing as it was. We have PDFs that were just
19 printouts of the spreadsheet, so I'm going to be
20 going through the PDFs.

21 ARBITRATOR MASUCCI: This is the same
22 document that was sent as part of the exhibits.
23 I will say when I looked at it, it had value on
24 that too.

25 Q. There is an issue where you need to

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1 enable an Internet connection, and it doesn't always
2 work right way. So the printouts that are also
3 provided in the Joint exhibits are just captures of
4 how it looks when the Internet connection is up and
5 is running properly?

6 MR. MARKS: What exhibit is that, sir?

7 MR. WHITE: That is Claimant's
8 Exhibit 1.

9 MS. STILLER: I don't think we have
10 that. That should not have been -- it was only
11 the Joint exhibits that were submitted.

12 MR. MARKS: I guess he's going to offer
13 it.

14 MS. STILLER: But I think he's
15 indicating that he had previously.

16 ARBITRATOR MASUCCI: No, he didn't.

17 Q. Distributed it previously, but not
18 offering it as an exhibit yet.

19 MS. STILLER: Is there an extra volume
20 of this exhibit?

21 MR. MARKS: On the other side of the
22 computer, I believe. I don't know if that's
23 extra or what.

24 Q. So let's walk through the different
25 pieces that you produced on the spreadsheet.

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1 The first tab in the spreadsheet is
2 labeled Lucio_data; is that correct?

3 A. That's correct. That's not what's on
4 the screen, but that is the first half. Yes, I do
5 know that.

6 Q. How did you compile the information
7 that's on the Lucio_data tab?

8 A. That information was what I extracted
9 through again that software Docuparser.
10 D-O-C-U-P-A-R-S-E-R. It's an Internet -- it's a
11 web-based program. It's opened to anybody. You can
12 upload invoices to it or any documents. But in this
13 case I uploaded invoices to it.

14 And then you can literally drag and
15 drop and isolate parts of the invoice, and the
16 program will recognize data and then put it out into
17 an Excel spreadsheet. So that was the origin of
18 this.

19 You can see the date that it went
20 through that Docuparser, the 2018 11/05, and then you
21 can see the original invoice. So each one of the
22 invoices has a file name, and the convention looks
23 like it's the date and the time that the invoice was
24 originally created as the name of the invoice, but
25 that's how the record was produced.

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1 Q. Did you double check that Docuparser
2 was operating properly to create this?

3 A. I did. In fact I had to go through
4 every single one of these lines and verify them. I
5 ran into an issue of the fact that it condensed
6 stuff, so I had to verify all of them. It's not a
7 perfect program. The information came out correctly,
8 but as you can see, there's not spaces lined up and
9 things like that, so I had to actually verify
10 everything one line at a time. It's very monotonous.

11 Q. I'm going to show Exhibit J1. That's
12 just a sample invoice that we were discussing a
13 moment earlier.

14 Is this an example of the invoice
15 documents that you ran the Docuparser program to
16 extract the text from?

17 A. Yes. That's an example.

18 Q. And how many of these did you say you
19 processed in that way?

20 A. There were 990 that were not -- they
21 were original documents that went through and
22 processed through the system that way.

23 Q. Were there any other files included
24 with the data that you extracted these from?

25 A. There were. There were actually nine

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1 additional files that had no data in the middle.

2 They were just blank files.

3 Q. For the 990 invoices provided by Parts
4 Authority, it did actually have data in them. Is the
5 data from all of them captured on this tab?

6 A. Yes, it is.

7 Q. I notice at the bottom -- and if anyone
8 is using a hard copy, this is on page 28, the 28th
9 page.

10 MR. MARKS: You didn't number the
11 pages.

12 MR. WHITE: At the halfway point.

13 MR. MARKS: Sorry?

14 MR. WHITE: At the halfway point.

15 MR. MARKS: It's at the halfway point
16 like where the first arrow is.

17 MR. WHITE: The first tab.

18 Q. So I noticed that four of these entries
19 at the bottom were highlighted. Why is that?

20 A. When I first put all the invoices that
21 were provided by Parts Authority in, I realized these
22 four invoices that are dates that were inconsistent
23 with the other invoices. So I had highlighted them
24 in yellow and contacted Miss Lucio's counsel and
25 asked what to do with them.

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1 Q. How were they inconsistent?

2 A. I'm sorry. So the other invoices were
3 all from the year 2015, and these four invoices
4 originated either in 2017 or 2018. So they were in
5 with the other ones. I wasn't sure. They just stood
6 out to me.

7 Q. What did Miss Lucio's counsel tell you
8 to do after you flagged these as having odd dates?

9 A. To disregard them, not use the
10 documents at all.

11 ARBITRATOR MASUCCI: There are other
12 ones that also have 2018 dates.

13 MR. EARNER: So in this first column on
14 the left, that is the date of the document,
15 which is also the date it was printed. That is
16 the date that I actually -- the 11/05 date is
17 the date that I actually did the extraction
18 through that software. I just wanted to keep
19 all the information in case anybody had
20 questions, so that's why it's all included.

21 Q. Let's go through some of the
22 calculations that would be extracted. The second --
23 let's go to the tab on the spreadsheet. This tab was
24 Lucio_calculationsoriginal. Can you describe what
25 you did to create this tab?

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1 MR. MARKS: I'm sorry. Is there a
2 printout of that too?

3 MR. WHITE: There should be tabbies for
4 each different tab, and each one should have a
5 label. It should have a cover. The A, B, C
6 tabs.

7 MR. MARKS: This is B.

8 MR. WHITE: Each one has a cover sheet.
9 Lucio calculations original. And the next one
10 tab --

11 ARBITRATOR MASUCCI: It's C.

12 Q. Can you describe what you did to create
13 the Lucio_calculations (original tab)?

14 A. Yes. So the first thing it did was all
15 of the delivery addresses that were extracted through
16 Docuparser, I pull over to this document here, and
17 that's what that list is right there. And then I
18 just numbered them to make sure I had all 990 of
19 them.

20 Q. Once you pulled over those addresses,
21 what did you do next?

22 A. The next thing that I needed to do to
23 figure out what driving distances were is obtain the
24 originating address or where Miss Lucio started from,
25 so I contacted Miss Lucio's counsel and asked

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1 Miss Lucio's counsel to get the originating address,
2 basically where did these start from? If we know
3 where they're going, I need to know where they
4 started from.

5 Q. What was that address that you used?

6 A. That is the origin address, 200 Henry
7 Park Drive in Roswell, Georgia.

8 Q. How did you get that address again?

9 A. I got that from Miss Lucio's counsel.

10 Q. Once you had the origination address,
11 what did you do next?

12 A. What I did was I needed to figure out
13 the distance between the starting address and the
14 ending address. So I used this little link that says
15 request URL to essentially send the starting address
16 and the ending address to Google Maps, and Google
17 Maps then returned the answer of how far it was
18 between the two points.

19 Q. I'm advancing on the screen to the
20 first colored tabby. Is that what this URL column
21 is?

22 A. That's exactly what it is. This right
23 here is instead of actually going to like
24 GoogleMaps.com and typing in a start address ad an
25 end address, this just sends it directly to Google

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1 and says give me the information back. That's all it
2 is. It's really a basic request.

3 ARBITRATOR MASUCCI: So it's the second
4 tab.

5 MR. WHITE: Yes.

6 Q. What did you do with the data that
7 Google sent back?

8 A. Well, the information that I was
9 interested in was the distance, and Google sent the
10 distance calculation back, and it actually sent it
11 back in kilometers.

12 Q. I am advancing to the next colored
13 tabby.

14 A. There it is.

15 Q. So was this kilometer distance
16 something you entered, or was it automatically
17 provided by Google?

18 A. That was automatically provided by
19 Google.

20 Q. What did you do with that kilometer
21 distance once Google sent it back to you?

22 A. The first thing I did is I knew that in
23 the United States we use miles, so I wanted to
24 convert it to miles. Excel has a built-in function,
25 a built-in formula that converts kilometers to miles.

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1 So I removed KM, because it won't recognize that.
2 That's text. Then convert it into -- use the formula
3 built into Excel to convert it to miles. That's all.

4 MR. WHITE: There seems to be an issue
5 with the PDFs. Again in the original format,
6 you can see the headlines for each of these, but
7 it seems that it cut off on the PDFs.

8 We'll happily produce in PDF format the
9 remaining sections of it. And like I said, it's
10 in the Excel version that was distributed
11 earlier on that's ultimately going to be asked
12 to be entered into evidence at the conclusion of
13 this.

14 Q. For purposes of describing what you
15 did, what did you do; what did the mathematical
16 function in Excel give you?

17 A. It gave me the one way mileage. Again,
18 if you're talking about the conversion one, it gave
19 me the one way distance in miles once I did the
20 conversion.

21 Q. And then what did you do with that data
22 once you had the one way miles?

23 A. I was told to account for the round
24 trip by Miss Lucio's counsel, and I just simply
25 multiplied it by two to account for the trip out and

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1 the trip back.

2 Q. Did you manually multiply it by two,
3 or did you use a function in Excel?

4 A. I used a function in Excel.

5 Q. At the bottom of this -- again it's
6 coming up its value because of the issue. I see
7 there's a line that's called average miles per
8 delivery. If the Excel was functioning properly,
9 what would this be giving?

10 A. That would be giving the average of all
11 of the deliveries that there were records provided
12 for and how far or what the average trip was.

13 Q. Sitting here today, do you remember
14 what that was when this was working properly?

15 A. It was -- I do actually. It's 9.59.
16 Yes.

17 Q. How did you get that 9.59 number?

18 A. I didn't. That was a built-in function
19 in Excel also that calculated the average of all of
20 the round trips that it had previously calculated.

21 Q. What did you do to create column J on
22 this spreadsheet?

23 A. Column J is just simply the dates from
24 the original records when the original delivery was
25 done.

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1 Q. What is Column K?

2 A. Column K is the workweek, I guess it
3 would be called, 5/11/15. I recall looking it up.
4 That was a Monday.

5 So to group the data week over week, I
6 had to identify week 1, week 2, week 3. And I was
7 told by Miss Lucio's counsel that Sunday through
8 Saturday is a workweek. So each one of those dates
9 fell into a convention that it was week one. So 5/11
10 through whatever the last day of the week is is week
11 1, and then it goes to week 2 and so on.

12 Q. Has every date for which an invoice was
13 produced been assigned a workweek in that manner?

14 A. It has, yes.

15 Q. The next tab is
16 Lucio_calculationstrueup.

17 What did you do to create this tab?
18 And that's tab B on the printouts.

19 A. So this is an exact copy of the prior
20 tab with one single exception. The exception is
21 flagged. It's what's highlighted in grey.

22 Q. What is that exception?

23 A. That is -- I was provided information
24 again from Miss Lucio's counsel that she had I guess
25 previously testified, or there was a record that she

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1 never made less than six deliveries in a day.

2 And on some of those days I received
3 invoices that had less than six deliveries. So on
4 any day that had less than six deliveries, I added
5 this line and highlighted it and flagged it to
6 account for the variants, the difference.

7 Q. How did you account for the variance or
8 the difference?

9 A. That's actually up there in column I.
10 You'll see a number, the 38.36. If you look at
11 5/12/15, the next column on the right, there were
12 only two deliveries that day. So that 38.36 --

13 MR. MARKS: What day?

14 A. 5/12/15.

15 You can see there are only two records
16 that were provided for that day. So in order to get
17 to the six records, there was an addition of four
18 additional deliveries at the average rate of 9.59.
19 So 9.59 times four is that 38.36 number.

20 Q. How many days did you have to do this
21 adjustment for?

22 A. 40 days.

23 MS. STILLER: Can I just ask a
24 clarification question?

25 When you say 9.69 --

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1 MR. EARNER: 9.59.

2 MS. STILLER: Where do I find the 9.59
3 on this?

4 MR. WHITE: That's where I was saying
5 it was cut off. It's the average. I will show
6 you on the original.

7 MS. STILLER: You have to make it
8 larger for me to see the original then.

9 MR. EARNER: It would be on the
10 original tab as well. It's on both.

11 MR. WHITE: At the very bottom there is
12 an average under the line that is now
13 populating. It would be column I at the very
14 bottom once you have the full record there.
15 Column I is normally populated with each
16 individual round trip delivery distance.

17 Does that clarify your question?

18 MS. STILLER: It does kind of.

19 MR. MARKS: I can wait until cross.

20 ARBITRATOR MASUCCI: Yes.

21 MR. MARKS: It seemed like we stuck
22 some frog DNA in here. We now have Jurassic
23 Park.

24 ARBITRATOR MASUCCI: I have one
25 question. Is the assumption that every route

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1 test was one invoice, meaning every route is one
2 delivery?

3 Q. Do you want to answer?

4 MR. EARNER: You're asking me?

5 ARBITRATOR MASUCCI: Yes.

6 MR. EARNER: If the assumption was
7 every route is one delivery, yes. I just didn't
8 have any other way to do it. I didn't have any
9 information otherwise that said it was more than
10 one or that there were piggyback routes or
11 anything like that. There was nothing provided
12 to me that would even allow me to take that into
13 consideration.

14 ARBITRATOR MASUCCI: Let me rephrase
15 it.

16 So if she was given a route that had
17 three deliveries, your analysis does not account
18 for the fact that she may have made several
19 drop-offs on one route.

20 A. That's correct. I was never provided
21 information that said that that ever occurred, and I
22 had no way to know.

23 MR. MARKS: Are we wasting time here,
24 because we know that that happened.

25 MS. STILLER: And she even testified

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1 that that happened in her testimony.

2 ARBITRATOR MASUCCI: Let's continue.

3 CONTINUED EXAMINATION

4 BY MR. WHITE:

5 Q. The Lucio_hours table, what did you do?

6 What is reflected on this tab?

7 A. This is week over week.

8 MR. MARKS: What tab is that?

9 MR. WHITE: I believe it's D.

10 ARBITRATOR MASUCCI: It is.

11 Q. What is this tab?

12 A. This is a week-over-week summarization
13 of what Miss Lucio's actual pay was. I believe
14 that's -- yes, that's exactly what it is.

15 Q. Going to Joint Exhibit J2, are these
16 the checks that you used for your calculations of her
17 actual pay?

18 A. Can you scroll down? Do you mind,
19 please.

20 Yes, they are.

21 Q. How frequently were these checks issued
22 according to the document?

23 A. These were issued --

24 MR. MARKS: I object. You want to say
25 what's the date of the document? I'm not sure

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1 how he can testify to that.

2 Q. I will withdraw and rephrase if counsel
3 prefers.

4 MR. MARKS: I do prefer if you ask
5 appropriate questions based on the record.

6 ARBITRATOR MASUCCI: We don't have to
7 have arguments. Okay.

8 Rephrase the question.

9 Q. When were the checks issued?

10 A. On the 15th and the last day of each
11 month.

12 Q. How did you apportion the amounts from
13 those checks to different work weeks?

14 A. After contacting Miss Lucio's counsel,
15 I was told to include everything up to the date prior
16 that the check was issued as compensation that was
17 included in this check. So the very first check
18 issued on 5/15/15, everything from 5/14 prior to when
19 she started would be included in that check. That's
20 the information that was given.

21 Q. You used that same process for each of
22 the subsequent checks?

23 A. I did, yes.

24 Q. How did you determine which days she
25 worked to apportion the check amounts?

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1 A. Those came directly off the invoices.
2 That was the data that was shown earlier.

3 Q. How did you calculate the hours for
4 those days?

5 A. I was given that information again from
6 Miss Lucio's counsel. The original information I
7 received is that Miss Lucio worked from 8 a.m. to
8 6 p.m. Monday through Friday, and then 8 a.m. to
9 5 p.m. on Saturdays. So when I started, it was
10 Monday through Friday, 10 hours, and Saturday, nine
11 hours.

12 Q. You say that's how you started. What
13 other elements went into the number?

14 A. I was also told by Miss Lucio's
15 counsel, that there were four days a week that she
16 worked in excess of her past, 6 p.m. Some of the
17 days were 45 minutes, other days were one hour, and
18 also that four days a week she would have 30-minute
19 breaks that needed to be accounted for as well.

20 Q. How did you account for that on this
21 spreadsheet?

22 A. That's accounted for Monday and Tuesday
23 each week. I just added 45 minutes to those first
24 two days. Wednesday and Thursday added one hour, and
25 then there was a 30-minute break deduction, and

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1 that's where we arrive at the 10.25 for Monday
2 Tuesday, and 10.5 as a normative standard.

3 Q. And you used those assumptions for
4 every work week?

5 A. Yes.

6 Q. The assumptions stayed constant?

7 A. They stayed constant, yes.

8 Q. This tab also has a box called federal
9 minimum wage rate?

10 A. Yes.

11 Q. What is this?

12 A. That is the federal minimum wage rate
13 that was given to me by Miss Lucio's counsel that I
14 was told was in effect in 2015.

15 The regular rate is \$7.25, and the
16 overtime rate is one and a half times that or \$10 and
17 87 and a half cents.

18 Q. We have to hear the last tab. I will
19 switch to PDF4. This is the tab labeled
20 Lucio_weekoverweek.

21 What did you do to create this tab?

22 A. This is a summary of the prior tabs and
23 the information on the prior tabs.

24 Q. I'm sorry. It's a tab, the second to
25 last of the lettered tab?

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1 MR. MARKS: It's E.

2 A. So this is a summary of the information
3 that was in the prior tabs that we just reviewed with
4 one addition to it, and that addition is under
5 mileage calculations, which is the mileage rate that
6 .575 was again a number provided to me by
7 Miss Lucio's counsel that I was told was the IRS
8 reimbursable rate for that period of time.

9 Q. Just to be clear on this final
10 summarized table, how did you get the total hours
11 worked column?

12 A. That is a summary of what we just
13 covered in the last tab for that first week, a total
14 of all of the hours that were worked in that week,
15 and it happened to be 60.5 hours that week.

16 Q. The first two weeks were 60.5. Why is
17 the third week less than that?

18 A. It would be because she worked less
19 than 60 and a half hours. So if we go back to the
20 other one, we'll be able to see it.

21 Q. So that's --

22 A. In that week three, 5/26/15, she didn't
23 have any delivery slips for Monday. But it was --
24 she didn't work that Monday. That's why there's less
25 hours.

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1 Q. How did you calculate the actual paid
2 column?

3 A. That is the information from the checks
4 that was assigned to each day on a pro rata basis.

5 Q. Did you calculate the miles column?

6 A. That's a summary of the miles from that
7 true up tab that we covered earlier. Again, just
8 condensed into a total week. It was all done with
9 built-in Excel functions.

10 Q. You just testified a second ago about
11 what the mile rate column was?

12 A. Yes.

13 Q. What is the mileage value column?

14 A. The mileage value is again a simple
15 Excel function. It multiplies the miles times the
16 reimbursable rate to get a dollar value.

17 Q. Did you do that calculation manually?

18 A. No. That's done with a basic Excel
19 function as well.

20 Q. What's the effective pay column?

21 A. That is another basic Excel function.

22 MR. MARKS: I lost where we are. Can
23 you tell me where we are?

24 ARBITRATOR MASUCCI: It's tab E.

25 There's only one after tab E.

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1 MR. MARKS: I apologize. Thank you.

2 Q. Just to start again, what's the
3 effective paid column?

4 A. That right there is a calculation using
5 Excel, the basic function of Excel that takes the
6 actual pay and subtracts the not reimbursed mileage
7 value to arrive at an effective pay for each week.

8 Q. Did you do that calculation manually?

9 A. No. Again, that's an Excel formula.

10 Q. What's the effective hourly wage
11 column?

12 A. That is the mathematical calculation
13 using Excel that takes into account the total hours
14 worked at a regular rate. I'm sorry. The total
15 hours worked and the effective pay to arrive at what
16 an actual hourly rate is where the first 40 hours
17 would be a regular rate and the excess hours would be
18 at a time and a half rate to arrive at a dollar value
19 of what the effective pay rate was once the mileage
20 is taken into consideration as well.

21 Q. For this effective pay rate column, the
22 value never goes above \$5.22 a mile; is that correct?
23 Am I reading the column correct?

24 A. That's correct, yes. \$5.22 an hour,
25 yes.

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1 Q. Why is there a negative number on one
2 of these rows?

3 A. During Miss Lucio's last week with the
4 actual pay that was given to her, when you take into
5 account the actual mileage driven and the
6 reimbursement rate, it actually costs money. She
7 lost money by making deliveries.

8 Q. This next section is labeled what she
9 was supposed to get based on Federal minimum wage.
10 What did you do to create this box? We can start
11 with the regular hours column.

12 A. Sure. The regular hours is again a
13 summary of the prior tab with the first 40 hours
14 following under the regular rate, and you can see
15 that she worked at least 40 hours. It looks like one
16 column there for 31 hours.

17 So whatever happened, that week she
18 worked less than 40 hours, and then that's how that
19 first column is calculated.

20 The second column is the 40 hours
21 multiplied by the federal minimum wage rate from the
22 prior tab to arrive at a dollar value.

23 Q. How did you put together the overtime
24 hours columns?

25 A. That is a difference or what the excess

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1 hours in that week was over 40 hours brought forward
2 to that column to show overtime hours, and then
3 multiplied by the overtime rate, which is the federal
4 minimum wage rate times one and a half, that 10.875
5 on the prior sheet to arrive at a total summary if at
6 the minimum wage what the overtime pay would have
7 been for that week.

8 Q. What is the federal minimum wage total
9 column?

10 A. Again, basic function, addition
11 function. It is the total regular hours, dollar
12 amount plus, the total overtime hours, dollar amount.

13 Q. This final column here called wage
14 variance, what is that column?

15 A. Another mathematical formula. That's
16 the difference between that federal minimum wage
17 calculation that we just went through. When you
18 subtract the effective wage, which is the one to the
19 left of that that we covered just a few minutes ago
20 that takes into consider or consideration the
21 non-reimbursed mileage.

22 Q. So what is this column showing?

23 A. That's effectively an underpayment from
24 the federal minimum wage total against the actual
25 effective pay total. That's how much Miss Lucio was

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1 underpaid for the week.

2 Q. What's this total variance line at the
3 bottom?

4 A. That is a total of all of the lines
5 that are above it. That represents the \$6,257.04
6 over 24 weeks that Miss Lucio was paid or underpaid.

7 Q. For all the different cells on all the
8 different tabs in this spreadsheet, what were the
9 inputs that went into it?

10 A. Sorry. Can I have that question --

11 Q. All the different data that you had to
12 arrange to have going into it.

13 A. It was the data we first covered that
14 was extracted from the individual invoices. It was
15 the information provided by Google for the driving
16 distances. It was the paycheck data that came off
17 the paychecks. It was the inputs that were provided
18 by Miss Lucio's counsel, the federal minimum wage
19 right, the IRS reimbursement rate, as well as the
20 true up decision for less than six deliveries in a
21 day. Those all went into this calculation.

22 Q. So what filled in every other cell
23 besides the one that were just the direct inputs?

24 A. Other than the ones I just mentioned,
25 those were all calculations using Excel and built-in

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1 functions that are within.

2 Q. Just straightforward math?

3 A. Straightforward math. That includes
4 all of this. Just basic math.

5 MR. WHITE: That's all I have for
6 direct.

7 ARBITRATOR MASUCCI: Let's take a few
8 minutes.

9 MR. MARKS: Can we wait until I cross
10 examine the witness?

11 ARBITRATOR MASUCCI: Let's wait until
12 he cross examines the witness, and I actually
13 have one question.

14 Earlier today I thought Miss Lucio
15 testified that Saturdays she worked from 9 to 3,
16 but sometimes until 5. And what I heard him say
17 is that the calculation was based on Saturday
18 work of 9 to 5.

19 If I'm incorrect, that's fine. But I
20 would like to go back to where she testified on
21 her Saturday hours to clarify that.

22 MR. WHITE: Your recollection of the
23 testimony is correct from before.

24 ARBITRATOR MASUCCI: Right. That's my
25 recollection also, that she testified to 9 to 3.

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1 And you calculated Saturday based on
2 nine to five; correct?

3 MR. EARNER: That's correct. And just
4 for the point of clarity, there was excess hours
5 that were in here that would have mostly likely
6 been at the overtime rate, and we can look at
7 that very quickly as well.

8 ARBITRATOR MASUCCI: You might want to
9 look at it on a break. How long do we need?

10 MS. STILLER: Are we going to go ahead
11 with the witness that you wanted to take out of
12 order? And if so, do we need to do it now? Do
13 I need to get my IT person in to make sure we're
14 set up to do it by video?

15 MR. FREI-PEARSON: Mr. Oliveria is in
16 class until 3:45, and then he's going to go to
17 the place to testify at 4.

18 ARBITRATOR MASUCCI: So we might be
19 able to get a little bit of cross in.

20 MR. FREI-PEARSON: I have my phone with
21 me. As soon as Mr. Oliveria calls me, then
22 I'll know he is where he needs to be. And I
23 suggest that we take a break and work out the
24 video.

25 MS. STILLER: I don't think we need a

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1 lot of time together, but just a little.

2 ARBITRATOR MASUCCI: Okay.

3 (Time noted: 3:35 p.m.)

4 CROSS EXAMINATION

5 BY MR. MARKS:

6 Q. Mr. Earner, explain to me again how you
7 figured out the hours that you assigned to
8 Miss Lucio?

9 A. Yes. They were given to me by
10 Miss Lucio's counsel.

11 Q. What were they?

12 A. They were 8 to 6 p.m. Monday through
13 Friday, and 8 to 5 p.m. on Saturday.

14 Q. And then you added some time as well
15 beyond that?

16 A. Yes. I was instructed to do so by
17 Miss Lucio's counsel.

18 Q. How much time? I understand all the
19 information you got you got from --

20 A. I wanted to make sure I didn't add
21 anything.

22 Q. You didn't read her deposition?

23 A. Not at all.

24 Q. You didn't talk to Miss Lucio?

25 A. No. I never saw her before today.

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1 So I will answer your question.

2 I was told that she worked four days a
3 week in excess of 6 p.m., and the excess time was
4 anywhere from 45 minutes to an hour. I was
5 instructed to apportion that two days at 45 minutes,
6 two days at one hour and also deduct breaks as well,
7 four 30-minute breaks throughout the week. One on
8 Monday, one on Tuesday, one on Wednesday, one on
9 Thursday.

10 Q. Was it just random what days you
11 attributed that to?

12 A. That's what was given to me.

13 Q. They said put this break on Monday?

14 A. Yes.

15 Q. Would that have any impact on the
16 analysis if you moved the break to Friday?

17 A. It could.

18 Q. It could change it?

19 A. Yes. I would have to think it all the
20 way through, but if the breaks were taken later in
21 the week, she would hit her overtime earlier, and it
22 will actually increase the rest of the calculations.

23 Q. The extra 45 minutes you added from
24 Monday to Friday, if that were later in the week,
25 that would undo that?

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1 A. I would have to do the math. I would
2 have to use the formula to say for sure, but I can
3 say with a hundred percent certainty, yes, it will
4 change things. Yes.

5 Q. How long did it take you to do this
6 whole entire calculation?

7 A. The whole sheet, about four hours.

8 Q. So this whole job took four hours to
9 get to the conclusion?

10 A. No. There was some review time. I
11 shared it with Miss Lucio's counsel, including review
12 time of this sheet, six hours, six and a half hours.

13 Q. A total of six and a half hours to do
14 this whole project?

15 A. Yes.

16 Q. How much did you charge for that?

17 A. I haven't charged anything yet.

18 Q. How much were you going to charge?

19 A. Whatever the same rate was for the last
20 one. I think it was approximately \$190 an hour I
21 guess. I don't do the actual billing.

22 Q. You don't set your own rate as
23 president of the equipment?

24 A. No. In fact, I'm not going to be
25 ignored in any way by being here. Personally I'm on

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1 a salary.

2 Q. You're not paying for your time now?

3 A. This is where I am for my work day
4 today.

5 Q. So you're not going to charge for that?

6 A. I'm not going to charge any sort of
7 special rate. No. My company is going to charge
8 again probably -- I will even set it now, \$190 for
9 the work I did on this.

10 Q. How many work days did you include in
11 your calculation?

12 A. How many work days?

13 Q. Yes.

14 A. One work day for every day we had a
15 record.

16 Q. How many days is that?

17 A. I don't know the exact number of days.
18 I know it was 24 weeks, and she averaged six days a
19 week. So I can give you a ballpark figure if you
20 want.

21 Q. I would like to know the actual figure.

22 A. We can count it, if you want. We can
23 go through.

24 Q. You haven't done that, I guess?

25 A. I haven't done that now. Every day

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1 that she had a delivery record I counted as a work
2 day. That's what I can tell with a hundred percent
3 certainty.

4 Q. On how many days did you not have
5 records and you had to use six deliveries?

6 A. So there were never any days that we
7 added six deliveries if there wasn't a record. If
8 there was a record to establish a work day, and there
9 were less than six records, there were 40 of those
10 days, if that's your work.

11 Q. 40 days were less than six records?

12 A. That's correct.

13 Q. That's like 33 percent of the time is
14 less than six records; right?

15 A. I'd have to do the math. I mean if you
16 figured it out --

17 Q. I figured she worked 124 work days.
18 That's information that we provided.

19 Are you aware of that?

20 A. Yes. Absolutely.

21 Q. So you're aware of the list of days
22 that Diligent produced that said these are the days
23 she was compensated for; correct?

24 A. I was aware of the days that there were
25 records. If that's the same thing you're talking

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1 about, then yes, that's correct.

2 Q. It's not. Did you receive a list of
3 the days that Diligent compensated the claimant for?

4 A. I don't recall receiving it. If I did,
5 I didn't use it for these calculations.

6 Q. Now again, I think we covered this
7 before, but all of your calculations on distance
8 involved from the store to the customer on the
9 invoice, back to the store?

10 A. Yes. Google's calculations, but yes
11 all the calculations I used, yes.

12 Q. So there's no account made for a
13 situation where three invoices were given at the same
14 time; correct?

15 A. No. In fact, to my knowledge, nothing
16 like that was ever produced. At least I never
17 received it, so I had no way to know that. If that
18 record exists, it wasn't provided to me.

19 Q. You didn't ask about that?

20 A. No. I was given what was provided.

21 Q. Would that materially change your
22 calculation?

23 A. Materially?

24 Q. Yes.

25 A. It would be speculative. I have no

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1 idea. I don't know.

2 Q. You used the average miles per
3 delivery. So, I don't know. If one day she went a
4 thousand miles, and every other day she went one
5 mile, you would have the same results. Is average
6 the right thing to use here, or should it be media?

7 A. That's a judgment call. I have no
8 idea. I didn't make any decisions. I asked
9 Miss Lucio's counsel.

10 Q. That's a judgment call?

11 A. Yes, to use that.

12 Q. Do you know what the work week was at
13 Parts Authority?

14 A. No.

15 Q. You used Saturday to Sunday or Sunday
16 to Saturday?

17 A. Sunday to Saturday. That's what was
18 provided to me.

19 Q. If the work week was Thursday to
20 Wednesday, would that make a change in your
21 calculations?

22 A. I'm sure it would have. I don't know
23 how. Materially, very unlikely.

24 Q. It's interesting how you know that
25 that's not material. But when I asked you before,

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1 you weren't able to say it wasn't material.

2 Do you know that it's not material?

3 ARBITRATOR MASUCCI: Could you let him
4 answer the question before you ask your next
5 question, please.

6 A. What I'm saying is if it starts on
7 Saturday, right, versus Tuesday, versus Wednesday,
8 the delivery slips were still the same for every
9 finite day. Perhaps it was too far to say material.
10 I don't know that it wouldn't materially change.

11 But if you're asking me, I didn't
12 calculate it that way. I don't know the answer to
13 that.

14 Q. Did you include any situation where
15 Miss Lucio made a delivery and then went home instead
16 of going back to the store?

17 A. I was never informed of that when that
18 happened. I didn't have the information to calculate
19 it.

20 Q. Now I think you said that you used a
21 check date, so you included everything up until the
22 14th.

23 A. That would be for that first check,
24 yes. That's what I said the day prior. Everything
25 up to the day prior to the day the check was issued,

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1 from the date of the last calculated date to the date
2 prior to when the next check was issued, that was the
3 inclusive.

4 Q. So not the 15, just the 14?

5 A. On that first one, yes.

6 Q. Okay. On every other one, what was the
7 period?

8 A. From the 15th through the end of the
9 month or the day prior to the check issued, so it
10 would have included 15th as well on the next check.

11 Does that make sense?

12 Q. No. Maybe I'm just not following. For
13 the first pay period you computed it to the 14th?

14 A. That's correct, yes.

15 Q. Then the second pay period you computed
16 from the 15th to the end of the month?

17 A. To the day prior to the end of the
18 month. The check was issued at the end of the month,
19 the last day of the month.

20 Q. Your assumption was that the check did
21 not include the final day of the month or the 15th of
22 the month?

23 A. That's what I was told, yes. I didn't
24 make any assumptions.

25 Q. So you're saying that the check then

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1 for, I don't know, April -- the check for June would
2 have included May 31 through June 14?

3 A. That's correct, yes. If that's the
4 date, yes.

5 Q. Those are dates.

6 A. Yeah. I would have to look at the
7 check to make sure there was one issued. But yes, I
8 believe that is in the window. Actually, I can check
9 right here. So yes, I can confirm that.

10 Q. So you didn't give any deposition
11 testimony?

12 A. None.

13 Q. Did you do anything to verify the math
14 that you did?

15 A. To verify it?

16 Q. Yes.

17 A. I did spot check it from time to time,
18 yes.

19 Q. What did you do to a spot check?

20 A. I would manually calculate using a
21 calculator.

22 Q. So you checked the math that was done,
23 not the --

24 A. So In order to verify that my function
25 was working, what was done in Excel, I would spot

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1 check using an actual math calculator outside that,
2 and I never had any discrepancy between the two and
3 never changed it.

4 Q. But you kept the same assumptions?

5 A. I used the same strategy, yes.

6 Q. Which was 8 to 5 on Saturday? Yes?

7 A. That was part of them, yes.

8 Q. The 1st to the 14th, or the 31st to the
9 14th?

10 A. Yes, sir.

11 Q. Every delivery being a single delivery;
12 yes?

13 A. That's correct, yes, sir.

14 Q. And even if she went home, you were
15 still giving her mileage back to the store; yes?

16 A. I had no other information other than
17 what I told you.

18 Q. You also assumed that she worked passed
19 6 o'clock four days a week?

20 A. Again, I made no assumptions. I was
21 given that information, and that's in the
22 calculation. That's included, yes, sir, if that's
23 what you're asking.

24 Q. If all of those things are wrong, then
25 your calculation is wrong?

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1 A. That's correct.

2 MR. MARKS: Thank you. I have nothing
3 else.

4 ARBITRATOR MASUCCI: Redirect?

5 EXAMINATION

6 BY MR. WHITE:

7 Q. Mr. Earner, you testified that Total
8 Trial Solutions has done spreadsheets like this in
9 other arbitrations; is that correct?

10 A. On four occasions, yes, that I'm aware
11 of.

12 Q. In those other spreadsheets that were
13 put together, did the delivery distance calculations
14 include multiple deliveries on the same runs?

15 MR. MARKS: Relevance.

16 ARBITRATOR MASUCCI: What is the
17 relevance?

18 MR. WHITE: Just establishing the
19 difference in the underlying data set that we
20 had to work with.

21 ARBITRATOR MASUCCI: Are they
22 arbitrations similar to this one?

23 Q. Were those delivery driver
24 arbitrations?

25 A. Yes, they were.

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1 Q. In which you calculated -- in which
2 Total Trial Solutions calculated -- were those
3 arbitrations in which Total Trial Solutions had to
4 calculate the distances that delivery drivers
5 performed runs?

6 MR. MARKS: I object. If we're going
7 to talk about what we did in other classes, it's
8 clearly expert testimony because he's going to
9 make a comparison to what happened here.

10 ARBITRATOR MASUCCI: I think that you
11 should disregard the question.

12 Is there anything else?

13 I don't have any questions.

14 MR. FREI-PEARSON: We're waiting for
15 Mr. Oliveria who had a lab, but I expect he will
16 call me shortly. He said he was on his way. He
17 had to go to another building.

18 ARBITRATOR MASUCCI: You can go off the
19 record.

20 (At this time, a recess was taken.)

21 MR. WHITE: I'd like to offer into
22 evidence Claim C1, the spreadsheet that was
23 described in the testimony of Michael Earner.

24 MR. MARKS: I object, because it's not
25 a demonstrative exhibit based on the facts we

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1 have here, so it's irrelevant.

2 ARBITRATOR MASUCCI: So in terms of
3 relevance, I'm going to take it in and apply
4 whatever worth I deem appropriate acknowledging
5 the facts that are variances between the
6 testimony and some of the information and
7 assumptions that were made.

8 MR. MARKS: I would ask the arbitrator
9 to take judicial notice of the hearing
10 transcript in the Johnson v. Parts Authority
11 case in which Miss Lucio is a plaintiff.

12 The complaint is a Joint exhibit, and
13 her opt-in notice is a Joint exhibit, but I had
14 offered the transcript of oral argument wherein
15 claimants assert that Diligent is not the
16 employer.

17 ARBITRATOR MASUCCI: Diligent is not
18 the employer?

19 MR. MARKS: That's claimant's assertion
20 that was in opposition to arbitration, the
21 position being that we are not contending
22 that -- well, it's in our brief but, in fact,
23 Diligent was not his employer. He doesn't
24 allege that Parts Authority or Diligent were
25 related in any way or were components of a

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1 single employer relationship, or joint
2 employers, or joint tortfeasors were under
3 common control or any other relationship which
4 results in the legal treatment of them as the
5 same entity or holds one responsible for the
6 conduct of the others.

7 MR. FREI-PEARSON: May I respond to
8 that?

9 ARBITRATOR MASUCCI: Yes.

10 MR. FREI-PEARSON: We're not --
11 Miss Lucio is certainly not estopped by that
12 argument which is made to avoid arbitration so
13 that it can proceed in court -- we made an
14 argument, which is certainly not binding on
15 Miss Lucio's behalf. In fact, that article was
16 made on behalf of Mr. Johnson.

17 We have no objection to an exhibit
18 coming in because it's an arbitration. As a
19 legal matter, if they're there to argue because
20 Mr. Johnson chose to assert a claim against
21 Parts Authority only, that that somehow estops
22 Miss Lucio, that's just wrong as a matter of
23 law. For estoppel to happen, the court has to
24 agree with the argument in the same case and
25 rely on it. Clearly the court didn't agree with

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1 us because we wouldn't be here if they had.

2 So we have no objection to the
3 transcript coming, but we think it's entitled to
4 zero weight.

5 ARBITRATOR MASUCCI: I will take it in,
6 again noting the arguments that are being made.
7 Has there been a stipulation as to the
8 respondents in this matter?

9 MR. FREI-PEARSON: We have not yet
10 worked that out. We had a conversation and
11 we'll continue to work that out.

12 MR. MARKS: Can we please mark this as
13 Respondent's Exhibit A.

14 (Respondent's Exhibit A, the transcript
15 of Civil Cause for Motion Hearing before the
16 Honorable Robert M. Levy, United States
17 Magistrate Judge, marked for Identification as
18 of this date.)

19 ARBITRATOR MASUCCI: We're going to
20 have the oath administered to you. Can you
21 raise your right hand.

22 R E N A N O L I V E R I A, a Witness herein,
23 having been first duly sworn by Terri
24 Fudens, a Notary Public of the State
25 of New York, was examined and

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. POTASHNICK:

4 Q. Mr. Oliveria, I want to apologize again
5 for the logistical issues.

6 Can you tell us what you were doing
7 before you testified today?

8 A. I'm in between classes right now on
9 break at Georgia Perimeter College.

10 Q. What's your educational background?

11 A. I graduated high school in 2009, and
12 I'm currently attending college.

13 Q. Why are you here today?

14 A. I'm here to tell the truth about how
15 Parts Authority treats its employees and how we're
16 underpaid.

17 Q. Do you know Miss Lucio?

18 A. Yes. She's my sister-in-law.

19 Q. Does that relationship affect your
20 ability to tell the truth?

21 A. Absolutely not. I'm here to tell the
22 truth.

23 Q. What's your relationship with Parts
24 Authority?

25 A. I used to work for them, and I filed a

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1 claim against them.

2 Q. When did you first work for Parts
3 Authority?

4 A. January, 2015.

5 Q. How did you start working for Parts
6 Authority?

7 A. I asked my cousin's husband, and he
8 said that I could get a job at Parts Authority, so he
9 gave my number to Fred. He contacted me and he
10 texted me, and I met him at his office at Norcross
11 next to the Parts Authority store.

12 Q. What happened in that meeting?

13 A. He asked me for documentation. He made
14 me sign some paperwork, and I wasn't able to read
15 through all of it.

16 Q. Why didn't you read through all of it?

17 A. Fred made me feel rushed.

18 Q. Do you know if the documents Fred made
19 you sign said you can hire other workers to do your
20 work for you?

21 A. I don't know.

22 Q. Is it a true statement that you could
23 hire other workers to do your work for you?

24 A. No.

25 Q. What else happened during the meeting?

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1 A. He said I would be working at Parts
2 Authority.

3 Q. When did you start working for Parts
4 Authority?

5 A. January of 2015.

6 Q. And were you a temp worker or a W2
7 worker at that time?

8 A. I was a temp worker.

9 Q. What were your job responsibilities?

10 A. To deliver car parts.

11 Q. What were your hours?

12 A. 8 to 5:30, and sometimes 5 -- 8:30 to
13 6.

14 Q. How did you get your hours?

15 A. Kathy the manager assigned them to us.

16 Q. Did you ever want to take days off?

17 A. Yes.

18 Q. Were your requests for days off
19 granted?

20 A. Sometimes yes, sometimes no.

21 Q. We talked earlier about whether or not
22 you were allowed to hire drivers to replace you. Why
23 do you say you weren't allowed to hire drivers to
24 replace you?

25 A. We had a meeting and at that meeting

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1 Kathy told us specifically that we cannot hire or
2 have drivers replace us.

3 Q. Who is Kathy?

4 A. Kathy is the Parts Authority manager.

5 Q. How often did Kathy have meetings?

6 A. I'm sorry. What was that question?

7 Q. How often did Kathy have meetings with
8 the drivers?

9 A. About once or twice a week.

10 Q. What happened in those meetings?

11 A. She would just mention about any
12 problems going on at the warehouse, if the drivers
13 were being late or if we were taking too long on
14 deliveries.

15 Q. Were those meetings just for temp
16 drivers?

17 A. They were for W2 and temp drivers.

18 Q. Did you, and we'll get into this in
19 more detail later, but did you later on become a W2
20 driver after working as a temp driver?

21 A. Yes, I did.

22 Q. Did you have to use Parts Authority's
23 paperwork?

24 A. Yes. Two drivers and temp drivers had
25 to use Parts Authority paperwork.

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1 Q. Who told you to use Parts Authority
2 paperwork?

3 A. Kathy, the manager.

4 Q. Did you have to get Parts Authority
5 customers' signatures each delivery?

6 A. Yes.

7 Q. Was that true when you were a temp
8 driver and when you were a W2 driver?

9 A. Yes.

10 Q. Who told you to get signatures each
11 delivery?

12 A. Kathy.

13 Q. Did you have to check the accuracy of
14 the parts delivered each delivery?

15 A. Yes.

16 Q. Was that true when you were a temp
17 driver and when you were a W2 driver?

18 A. Yes.

19 Q. Who told you to check the accuracy?

20 A. Kathy did.

21 Q. Did you have to bring back Parts
22 Authority's paperwork for each delivery?

23 A. Yes.

24 Q. Was that true when you were a temp
25 driver and when you were a W2 driver?

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1 A. Yes.

2 Q. Who told you to bring back the
3 paperwork?

4 A. Kathy.

5 Q. Did you manage anyone as a temp driver?

6 A. No.

7 Q. Could you change the amount of your
8 profit or loss by doing more or less work?

9 A. No. We had to do the work that was
10 given to us. If I took a day off, I would get
11 deducted for that, and the work was or the pay was
12 predetermined. We do not pick up extra work.

13 Q. Did you ever ask Parts Authority
14 customers if you could do additional work for them?

15 A. No. I feel like I would get in trouble
16 if I did.

17 Q. Who was your boss when you worked as a
18 Parts Authority temp driver?

19 A. Kathy was. We had to report to her at
20 the beginning and the end of the day, and she could
21 fire us if she wanted to.

22 Q. How long did you work for Parts
23 Authority after you started in about January of 2015?

24 A. About 13 months.

25 Q. Why did that position end?

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1 A. The work and the hours were completely
2 controlled by Parts Authority. I was working more
3 than 50 hours a week, and I needed more time to
4 myself.

5 Q. Did you ever talk to Miss Lucio about
6 working for Parts Authority?

7 A. Yes. I was the one that told her about
8 the job.

9 Q. How did that conversation go?

10 A. I told her that she could contact Fred
11 and that she would be working for Parts Authority.

12 Q. Did you tell her the job would be with
13 Diligent?

14 A. No, because most of the work was done
15 at Parts Authority.

16 Q. Do you know where Miss Lucio worked?

17 A. She worked at the Roswell store.

18 Q. Which store did you work at?

19 A. The Woodstock store.

20 Q. And how far apart were the Woodstock
21 and Roswell stores?

22 A. I think about 15 miles.

23 Q. Did you ever consider working at the
24 Roswell store?

25 A. Yes. My wife and I, we were planning

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1 on either moving to Roswell or Marietta. So I asked
2 Kathy if the stores ran the same, and she told me
3 that they were the same. I also asked Susana about
4 information. She told me they are the same. And I
5 also spoke to other Parts Authority employees, and
6 they told me the same thing.

7 Q. Did you ask Fred?

8 A. No.

9 Q. After you stopped being a temp driver
10 for Parts Authority, did you come to work for Parts
11 Authority again?

12 A. Yes.

13 Q. What happened?

14 A. A friend of mine told me that Parts
15 Authority was hiring W2 drivers, and I spoke to
16 Kathy, filled out an application, and I was hired.

17 Q. And about when did that happen?

18 A. June of 2017.

19 Q. Can you list all of the differences
20 between your job as a W2 driver for Parts Authority
21 and your job as a temp driver for Parts Authority?

22 A. As a W2 employee I was paid more --
23 excuse me. Sorry.

24 As a W2 employee, I was paid more, I
25 had an hourly wage. I had -- as a W2 employee, I

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1 also had to clean the bathrooms and put up car parts
2 in between deliveries. I did not have to do that as
3 a temp worker. And also as a W2, I got reimbursed
4 for my driving costs.

5 Q. As a W2, did you have to wear a
6 uniform?

7 A. No.

8 Q. As a temp did you have to wear a
9 uniform?

10 A. Yes.

11 Q. Are there any other differences?

12 A. No, nothing I can think of right now.

13 Q. Any differences in the way you
14 performed the runs themselves?

15 A. No. It was the same.

16 Q. Any differences in the way the runs
17 were assigned?

18 A. It was on a first come, first serve
19 basis.

20 Q. As a temp driver, did you have the
21 ability to decide which runs to take?

22 A. No.

23 Q. As a W2 driver, did that change?

24 A. No. It was the same.

25 Q. As a temp driver, did you have more

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1 freedom over your schedule than you had when you were
2 a W2 driver?

3 A. No. We had set hours. We had set
4 hours as a W2 and a temp driver.

5 Q. As a temp driver, were you allowed to
6 work for other companies in between deliveries?

7 A. As a temp driver I had to make the
8 deliveries and return to the warehouse. It was the
9 same.

10 Q. That didn't change when you were a W2
11 driver?

12 A. It did not change.

13 Q. When you were a temp driver, if a
14 customer had questions or complaints when you made a
15 delivery, what did you do?

16 A. I called Kathy and she would try to
17 resolve it.

18 Q. Did that change when you were a W2
19 driver?

20 A. It did not change.

21 Q. Did Kathy ever punish you?

22 A. No.

23 Q. Did Kathy ever threaten to punish you?

24 A. Yes. She would threaten us, to fire us
25 if we didn't do the work that Parts Authority wanted

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1 us to do.

2 Q. Did she make that threat to temp
3 drivers or just to W2 drivers?

4 A. She made it to the W2 and temp drivers.
5 It was the same.

6 MR. POTASHNICK: No further questions
7 for me. Opposing counsel may ask some
8 questions.

9 We're going to wait and then you might
10 have some questions coming.

11 A. Sure.

12 (At this time, a brief recess was
13 taken.)

14 ARBITRATOR MASUCCI: Mr. Oliveria, this
15 is cross-examination.

16 CROSS EXAMINATION

17 BY MR. MARKS:

18 Q. Do you see me over here? I'm in the
19 corner.

20 A. Okay.

21 Q. So you opted into a litigation pending
22 against Parts Authority seeking unpaid overtime and
23 minimum wage; is that right?

24 A. Yes.

25 Q. When did you do that?

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1 A. When did I file for that?

2 Q. Yes.

3 A. I'm not sure of the exact date.

4 Q. It was before you went to Parts
5 Authority and got a job, right, as a W2 employee?

6 A. I believe so.

7 Q. You also told your sister-in-law that
8 she should go to work for Parts Authority as a
9 Diligent driver; correct?

10 A. Yes.

11 Q. So you recommended that job, even
12 though you thought at the time you were getting
13 ripped off; yes?

14 A. At the time I did not believe that. I
15 didn't know the information.

16 Q. So for the first five months from
17 January to May of 2017, you claim you were not
18 getting -- you were working 50 hours or more and not
19 getting overtime?

20 A. I wasn't -- I know in the beginning I
21 wasn't sure that I was getting ripped off, but I
22 eventually learned that I was. I'm not sure when
23 that went about. I don't know the date of my
24 realization.

25 Q. So you intend to bring an arbitration

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1 claim against Parts Authority alleging that they owe
2 you money; right?

3 MR. FREI-PEARSON: Objection. Calls
4 for a legal statement from a non-lawyer.

5 MR. MARKS: He intends to bring a
6 lawsuit?

7 MR. FREI-PEARSON: You said bring an
8 arbitration.

9 MR. MARKS: I withdraw that.

10 Q. You've commenced an action against
11 Parts Authority. Do you intend to proceed with that
12 action?

13 A. I will refer to my counsel for that.

14 ARBITRATOR MASUCCI: I don't
15 understand. Why don't you just either rephrase
16 it or ask it again so that I can understand.

17 Q. You opted into a litigation; correct?

18 A. Yes.

19 Q. Under the Fair Labor Standards Act;
20 yes?

21 A. I'm not sure. I'm not a lawyer.

22 Q. Oh. So you don't know what claim you
23 made. Did you claim overtime?

24 A. I believe so, yes.

25 Q. Did you claim that you were

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1 misclassified as an independent contractor but were
2 actually an employee, is that the basis of your
3 claim?

4 MR. FREI-PEARSON: Objection.

5 ARBITRATOR MASUCCI: Go ahead and
6 answer.

7 A. I was a temp worker.

8 Q. You were a temp worker. What does that
9 mean?

10 A. They treated me differently, not as an
11 independent contractor.

12 Q. Who treated you differently, not as an
13 independent contractor?

14 A. Parts Authority.

15 Q. What did Diligent do; how did they
16 treat you?

17 ARBITRATOR MASUCCI: Could you wait a
18 minute.

19 A. Basically not much.

20 ARBITRATOR MASUCCI: Could you wait a
21 minute.

22 You have to be careful when you're
23 asking questions, because there is a delay, so
24 he's not hearing you. It's again slow down, but
25 because of the technology.

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1 Q. Have you spoken to Miss Lucio about her
2 claims against Parts Authority?

3 A. Yes.

4 Q. How frequently have you spoken with her
5 about it?

6 A. Not very frequently.

7 Q. More than five times?

8 A. Not -- maybe not even five.

9 Q. Did you review her deposition
10 testimony?

11 A. No.

12 Q. Can you tell me again what store --
13 what Parts Authority store you were working out of?

14 A. I worked out the the Woodstock Parts
15 Authority store.

16 Q. And do you know what Kathy's last name
17 is?

18 A. I forgot. I think it's Bryan. I'm not
19 sure.

20 Q. Did you speak with Miss Lucio about her
21 deposition?

22 A. No.

23 MR. MARKS: I'm done. Thank you.

24 ARBITRATOR MASUCCI: I've got a
25 question, and please clarify it for me. I'm the

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1 arbitrator.

2 MR. OLIVERIA: Okay.

3 ARBITRATOR MASUCCI: When you were
4 hired as a temp, were you hired by Diligent or
5 by Parts Authority directly?

6 MR. OLIVERIA: I'm not sure. The
7 paperwork I don't remember.

8 ARBITRATOR MASUCCI: Was the paperwork
9 presented to you by Fred?

10 MR. OLIVERIA: Yes.

11 ARBITRATOR MASUCCI: Were you
12 classified as an independent contractor or a
13 temp?

14 MR. OLIVERIA: I'm not sure what the
15 paperwork said. I don't have a copy of it.

16 ARBITRATOR MASUCCI: So you said that
17 you began work in January of 2015. Miss Lucio
18 began in May of 2015.

19 MR. OLIVERIA: Yes.

20 ARBITRATOR MASUCCI: Were you
21 unsatisfied or dissatisfied with your work
22 between January and May?

23 MR. OLIVERIA: I don't believe I knew
24 that I was being, like, quote unquote ripped off
25 at that point.

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1 ARBITRATOR MASUCCI: When did you
2 become aware that you might have been ripped
3 off.

4 MR. OLIVERIA: I'm not sure of the
5 exact date.

6 ARBITRATOR MASUCCI: When did you begin
7 work as a W2 employee.

8 MR. OLIVERIA: June of 2017.

9 ARBITRATOR MASUCCI: Okay. When you
10 said that as a temp you wore a uniform, was
11 there anything written on the uniform?

12 MR. OLIVERIA: Yes. It said
13 Diligent.

14 ARBITRATOR MASUCCI: That's all the
15 questions I have. Any redirect?

16 MR. FREI-PEARSON: Thank you again,
17 Renan. We appreciate it.

18 ARBITRATOR MASUCCI: Thank you.

19 MR. OLIVERIA: You're welcome.

20 ARBITRATOR MASUCCI: Good luck in
21 class.

22 MR. OLIVERIA: I can hang up soon?

23 ARBITRATOR MASUCCI: Right now.

24 Off the record.

25 (Time noted: 5:15 p.m.)

C E R T I F I C A T E

I, Terri Fudens, a Shorthand Reporter
And Notary Public within and for the State of New
York, do hereby certify:

I reported the proceedings in the
Within-entitled matter, and that the within
Transcript is a true record of such proceedings.

I further certify that I am not related
By blood or marriage and that I am in no way
Interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
My hand this 26th day of January, 2019.



TERRI FUDENS
Registration No. 01FU6230430
Notary Public for the State of New York
My commission expires: November 1, 2022

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5th (3) 71:15;109:10;160:6	95 (7) 68:16;137:1,2,8,9,14,16	
6		
6 (33) 26:7;43:10,13;45:3;47:14; 54:11,15,16;57:20,25;76:11; 89:22;102:5,5,6;104:17,24,		

JANUARY 16, 2019

CONTINUED ARBITRATION

Terri Fudens
Court Reporter

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AMERICAN ARBITRATION ASSOCIATION
CASE NO. 01-18-0000-6169

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SUSANA LUCIO,

Claimant,

vs.

PARTS AUTHORITY, LLC, et al.,

Respondent.

-----x

January 16, 2019
9:57 a.m.

CONTINUED ARBITRATION taken in the
above titled actions held at the Offices of
Abrams Fensterman, 3 Dakota Drive, Suite 300,
New Hyde Park, New York, before Terri Fudens,
a Certified Shorthand Reporter and Notary Public
within and for the State of New York.

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1 ARBITRATION

JANUARY 16, 2019

2 C O N T E N T S

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ARBITRATION -DAY TWO

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1 ARBITRATOR MASUCCI: Good morning
2 everybody. We are here on the second day of the
3 arbitration. I guess the first question I have
4 is did counsel get together regarding the
5 caption of the case?

6 MS. STILLER: We received a proposed
7 stipulation, which is fine with us, with respect
8 to -- and I can read it into the record if you
9 want to do that, or if you have it handy,
10 Andrew, you can do it.

11 MR. WHITE: It's just in the same
12 E-mail you have. I'm booting up my computer.

13 MS. STILLER: It's my understanding
14 that claimant is willing to stipulate that she
15 will withdraw, without prejudice, her claims
16 against all respondents except for Parts
17 Authority Inc. And I just lost the E-mail. And
18 Parts Authority, LLC provided that respondents
19 will stipulate to the following: That the
20 remaining respondent Parts Authority Inc. and
21 Parts Authority, LLC have adequate resources to
22 fully satisfy a judgment against them in this
23 arbitration.

24 Respondents will not argue that any of
25 the released respondents are more proper

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1 respondents than Parts Authority Inc. and Parts
2 Authority, LLC. And respondents have not
3 withheld any discovery relevant to claimant's
4 claims that otherwise would have been produced
5 absent the dismissal.

6 And should further discovery be deemed
7 necessary by the Arbitrator, respondents will
8 not withhold any future discovery on that basis.

9 We're fine with stipulating to the
10 respondent's portion and, therefore, I
11 understand that the claimant will withdraw the
12 claims against the respondents except for Parts
13 Authority, Inc. and Parts Authority, LLC.

14 ARBITRATOR MASUCCI: Okay.

15 So this is a question that I have in
16 terms of housekeeping for me.

17 Do you intend to get a copy of the
18 transcript?

19 MR. FREI-PEARSON: We likely do. If
20 your Honor would like post-hearing briefs, we
21 think that makes sense, so perhaps a little bit
22 of guidance.

23 ARBITRATOR MASUCCI: We'll wait until
24 the end of the day to figure out whether it
25 makes sense to have post-hearing briefs.

ARBITRATION -DAY TWO

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1 You did submit pre-hearing briefs, and
2 I'm not sure what more you would cover. But
3 that's why I think that we'll wait until the end
4 of the day.

5 The reason I ask that question is that
6 any award really should reflect that
7 stipulation. And if there is no transcript that
8 I can follow or use as guidance, I'm going to
9 need something in writing.

10 MS. STILLER: I think we had
11 previously -- we can just submit --

12 ARBITRATOR MASUCCI: Just submit that
13 statement, and I'll incorporate it in any
14 decision.

15 MS. STILLER: We have previously, I
16 believe, just forwarded E-mail directly to you
17 copying in --

18 ARBITRATOR MASUCCI: Copying the AAA,
19 yes.

20 MS. STILLER: So, Andrew, we can just
21 forward that and say the parties have stipulated
22 to this and copy everybody in.

23 MR. WHITE: I think that will be fine.

24 MS. STILLER: Thank you.

25 ARBITRATOR MASUCCI: As to today, first

ARBITRATION -DAY TWO

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1 of all, my understanding is that you've rested;
2 right.

3 MR. FREI-PEARSON: Reserving rebuttal,
4 yes.

5 ARBITRATOR MASUCCI: So in terms of
6 witnesses today, Mr. Marks.

7 MR. MARKS: I have Mr. Glenn Parrish,
8 who is Assistant General Manager of Parts
9 Authority, Georgia. I have Mr. Fred Rosenau by
10 video conference, and if necessary, because
11 they're unable to testify to certain matters, if
12 we feel it's necessary we have Paul Spicker who
13 is General Counsel, Human Resources director for
14 Diligent. And if necessary, we have
15 Mr. Rosenthal.

16 ARBITRATOR MASUCCI: Parrish,
17 Rosenthal, Spicker.

18 MR. MARKS: No. Rosenau.

19 ARBITRATOR MASUCCI: What was his first
20 name again?

21 MR. MARKS: Fred.

22 ARBITRATOR MASUCCI: He will be here on
23 video?

24 MR. MARKS: Video.

25 ARBITRATOR MASUCCI: Okay. Why don't

ARBITRATION -DAY TWO

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1 we just get to it.

2 MR. MARKS: Sure.

3 G L E N N P A R R I S H, a Witness herein,
4 having been first duly sworn by Terri
5 Fudens, a Notary Public of the State
6 of New York, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MARKS:

10 Q. All right, Mr. Parrish, a little
11 background. Where do you work?

12 A. Parts Authority, Georgia.

13 Q. What is your job there?

14 A. Assistant General Manager.

15 Q. How long have you worked for Parts
16 Authority, George?

17 A. Since November of 2014.

18 Q. Are you familiar with Parts Authority's
19 facility in Roswell, Georgia?

20 A. Yes, I am.

21 Q. When did Parts Authority begin
22 operating a facility in Roswell, Georgia?

23 A. I don't remember the exact date.

24 Q. What year?

25 A. I don't know that I remember the exact

ARBITRATION -DAY TWO

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1 year we took the store in Roswell.

2 Q. You don't remember the year?

3 A. No, sir.

4 Q. Well, you started with Parts Authority
5 in 2014; correct?

6 A. Parts Authority, yes, 2014.

7 Q. That's my question. When did Parts
8 Authority begin operating that store in Roswell,
9 Georgia?

10 A. November, 2014.

11 Q. Prior to November, 2014, there was a
12 store, auto parts store in Roswell, Georgia?

13 A. Yes.

14 Q. Who operated that?

15 A. Miller Automotive.

16 Q. Did you work with Miller Automotive?

17 A. Yes, I did.

18 Q. Did you have responsibility for that
19 store in Roswell, Georgia.

20 A. Yes, I did.

21 Q. And prior to Miller Automotive, did
22 someone operate a store in Roswell, Georgia in that
23 location?

24 A. Yes.

25 Q. Who was that?

ARBITRATION -DAY TWO

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1 A. Genuine Parts Company.

2 Q. Did you work with them?

3 A. Yes, I did.

4 Q. What year did you start being
5 associated with a parts delivery store in Roswell,
6 George?

7 A. That would have been 1989.

8 Q. How, if you know, did Parts Authority
9 come to take over that location?

10 A. Miller Automotive was in bankruptcy,
11 and Parts Authority bought the company out of
12 bankruptcy.

13 Q. Was there a period of interrupted
14 service, or did it --

15 A. No, there was not.

16 Q. So Miller was operating in bankruptcy,
17 and then Parts Authority acquired that?

18 A. Correct.

19 Q. Can you tell me how many Parts
20 Authority employees work in the Roswell store?

21 A. Parts Authority employees would be
22 five.

23 Q. And who would they be?

24 ARBITRATOR MASUCCI: What period of
25 time?

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1 MR. MARKS: I think it's the same, but
2 let's focus on 2015.

3 A. 2015 would have been five. It would be
4 a store manager, a dispatcher, a stock manager and
5 two Parts Authority drivers.

6 Q. Was that the same sort of staffing that
7 Miller had had?

8 A. Yes, it was.

9 Q. In 2015, who was the manager of the --
10 who was the store manager in Roswell George?

11 A. Tammie Turner.

12 Q. Did she subsequently change her name?

13 A. She got married and became Tammie
14 Jaswa.

15 Q. Had Tammie worked for Miller
16 Automotive?

17 A. Yes, she had.

18 Q. In 2015 when Parts Authority took over
19 the location, who was the dispatcher?

20 A. Monica Carter.

21 Q. Did Monica Carter work for the
22 predecessor entity?

23 A. Yes, she did.

24 Q. Did Tammie continue in employment with
25 Parts Authority after 2015?

ARBITRATION -DAY TWO

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1 A. Yes, she did.

2 Q. And did Monica continue after 2015?

3 A. Yes, she did.

4 Q. Is Tammie employed by Parts Authority
5 today?

6 A. No, she is not.

7 Q. When did she stop working at Parts
8 Authority?

9 A. 2016, but I don't remember the month.

10 Q. Do you know where she is today?

11 A. I do not. She got married and moved
12 out of the country the last I had heard.

13 Q. Did Miller Automotive have a
14 relationship with Diligent Delivery?

15 A. We did.

16 Q. What was that relationship?

17 A. We would use them to make occasional
18 deliveries.

19 Q. What does that mean, you call them when
20 you needed them?

21 A. We would call them when we needed them.

22 Q. Does Parts Authority in Roswell,
23 Georgia have a relationship with Diligent Delivery?

24 A. Yes.

25 Q. What is that relationship?

ARBITRATION -DAY TWO

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1 A. We use them as an independent delivery
2 contractor.

3 Q. Do you call them when needed, or do
4 they provide a different service to Parts Authority?

5 A. We call them. We call them if we need
6 a driver, and then we have regular service from them.

7 Q. What is the regular service comprised
8 of?

9 A. The regular service is drivers from 8
10 to 6 depending on the seasonality and how many
11 drivers we need.

12 Q. How many drivers do you need in the
13 busy season?

14 A. The busy season we would use three.

15 Q. So you would have coverage from 8 to 6
16 by three delivery drivers through Diligent?

17 A. Correct.

18 Q. And in the not busy season?

19 A. We would have two.

20 Q. So the record is complete, could you
21 identify the busy season?

22 A. The busy season would be April through
23 the end of August.

24 Q. When Parts Authority started operating
25 the facility in November, 2014, was there any

ARBITRATION -DAY TWO

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1 training provided to the former Miller staff?

2 A. Yes, there was.

3 Q. Could you describe that for us, please?

4 A. They brought in a team to train our
5 employees on the different job they would perform as
6 well as policy and procedures regarding how Parts
7 Authority operates.

8 Q. Was there any discussion by Parts
9 Authority among the managers and dispatchers of their
10 interaction with Diligent Delivery?

11 A. There was.

12 Q. Can you tell us what you were advised?

13 A. We were advised that they were an
14 independent contractor and that our communication was
15 to go through Diligent, that we were not the employer
16 of the contract drivers. We were contracting service
17 from Diligent.

18 ARBITRATOR MASUCCI: Can I just go
19 back. You said that the hours are 8 to 6. What
20 days of the week?

21 MR. PARRISH: That would be Monday
22 through Friday.

23 ARBITRATOR MASUCCI: Any work on
24 Saturday?

25 MR. PARRISH: Saturday would be 8 to 3.

ARBITRATION -DAY TWO

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1 ARBITRATOR MASUCCI: Thank you.

2 Q. What were the duties and
3 responsibilities of the manager Tammie at the
4 Roswell location?

5 A. Responsible for running the store which
6 included processing and issuing credits, helping
7 check in, stock, put away stock, inventory control,
8 daily reporting.

9 Q. What were the dispatcher's duties,
10 Monica's duties?

11 A. The dispatcher's responsibility is to
12 to process the order as they got to the desk and then
13 give them to the first available driver to go out.

14 Q. Would a store manager under ordinary
15 circumstances on a daily basis do dispatching?

16 A. They would not dispatch except for to
17 cover for the dispatcher to get lunch.

18 Q. Explain to me the dispatch process at
19 the Roswell store; how did that work?

20 A. An order would print off on our invoice
21 printer. The store manager, stock manager, a Parts
22 Authority driver would go pull the order and bring it
23 back up to the counter.

24 The orders were grouped by the
25 dispatcher's knowledge of the area to put the

ARBITRATION -DAY TWO

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1 deliveries as close as possible together if they were
2 going to carry more than one delivery. Then when a
3 driver was available, they would dispatch him.

4 Q. Did dispatch advise the driver of what
5 roads they had to take where they were going?

6 A. No, sir.

7 Q. Did Parts Authority drivers advise the
8 Diligent Delivery driver which one had to go first if
9 they were grouped?

10 A. No, sir.

11 Q. Were dispatchers -- let's deal with
12 Monica. She was the dispatcher the whole entire
13 time.

14 Monica, was she paid hourly or salary?

15 A. Hourly.

16 Q. Did Monica have any supervisory
17 authority over Parts Authority employees?

18 A. She did not.

19 Q. Did Monica supervise authority over
20 Diligent Delivery drivers?

21 A. She did not.

22 Q. Did Tammie have the authority to
23 terminate a Parts Authority employee?

24 A. She would have to contact our HR
25 department and go through them to determine a Parts

ARBITRATION -DAY TWO

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1 Authority employee.

2 Q. Did Tammie have any authority to
3 terminate a Diligent Delivery driver?

4 A. She did not.

5 Q. Could Tammie report a Diligent
6 Delivery driver up through the Parts Authority Human
7 Resources Department?

8 A. She could not.

9 Q. What would she do if she had some
10 problem?

11 A. She would contact Fred Rosenau at
12 Diligent.

13 Q. I think you testified that Diligent --
14 the Parts Authority contracted with Diligent; is that
15 correct?

16 A. Right.

17 Q. And they contacted for a coverage of 8
18 to 6 Monday to Friday and 8 to 3 on Saturday?

19 A. That is correct.

20 Q. Did Parts Authority's contract with
21 Diligent provide that service in any particular
22 format?

23 A. There was no format.

24 Q. Did you require one driver perform all
25 those hours?

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1 A. No, we did not.

2 Q. Was there any prohibition of three
3 drivers providing covering that coverage?

4 A. There was none.

5 Q. If a driver for Diligent Delivery went
6 out on a run and didn't come back, what would happen?

7 A. We would contact Diligent to let them
8 know that we didn't have the coverage for the time
9 slot.

10 Q. Was it a policy or procedure at the
11 Parts Authority Roswell store for the dispatcher
12 and/or the manager to communicate with the Diligent
13 Delivery drivers?

14 A. No, sir.

15 Q. So when you're out on a run, they're
16 not calling them?

17 A. No, sir.

18 Q. If out on the road a Diligent Delivery
19 driver had an issue with a customer, what would
20 happen?

21 A. If they contacted the store, they could
22 contact to ask for help. Other than that, I don't
23 know.

24 Q. Let's say a customer had a question.
25 Could the Diligent Delivery driver out there on the

ARBITRATION -DAY TWO

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1 road answer that question?

2 A. I don't think they would be able to.

3 Q. So what would they do?

4 A. They would not have to do anything.

5 The customer would have to contact us directly.

6 Q. For the services provided by Diligent
7 Delivery, who did Parts Authority pay?

8 A. Diligent.

9 Q. Did Parts Authority pay any of the
10 Diligent Delivery drivers directly?

11 A. No, sir.

12 Q. Are you aware of any tips given to the
13 Diligent Delivery drivers?

14 A. No, sir.

15 Q. Did Parts Authority reimburse the
16 Diligent Delivery drivers for expenses?

17 A. No, sir.

18 Q. Did Parts Authority provide any
19 equipment used by the Diligent Delivery drivers?

20 A. No, sir.

21 Q. Do you know how the Diligent Delivery
22 drivers were compensated, if at all?

23 A. I do not.

24 Q. Did you ever discuss with anyone at
25 Diligent how they were paid?

ARBITRATION -DAY TWO

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1 A. I have not.

2 Q. Does it matter to you?

3 A. It does not.

4 Q. Did Parts Authority keep track of the
5 days that a Diligent Delivery driver appeared for an
6 engagement?

7 A. No, sir.

8 Q. Did Parts Authority track the hours
9 worked by the Diligent Delivery drivers?

10 A. No, sir.

11 Q. Did Parts Authority conduct any
12 background check on the Diligent Delivery drivers?

13 A. No, sir.

14 Q. Did Parts Authority give a driving test
15 to the Diligent Delivery drivers?

16 A. No.

17 Q. Did Parts Authority maintain personnel
18 files on the Diligent Delivery drivers?

19 A. No.

20 Q. Did Parts Authority monitor how many
21 miles the Diligent Delivery drivers were driving?

22 A. No.

23 Q. There's been testimony by Miss Lucio
24 that when she told Tammie that she had driven
25 120 miles, Tammie inspected her mileage. It's also

ARBITRATION -DAY TWO

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1 listed in the Statement of Claim that Tammie would
2 check her mileage every day. Is that conceivable?

3 A. I see no reason why she would.

4 Q. Does it matter how many miles the
5 Diligent Delivery driver was driving on a given day
6 or week?

7 A. No, sir.

8 Q. Did Parts Authority ever call any of
9 its customers to see how the Diligent Delivery
10 drivers were performing?

11 A. No, sir.

12 Q. Did it send any supervisors to ride
13 along with the Diligent Delivery drivers?

14 A. No, sir.

15 Q. Did Parts Authority provide any
16 training to the Diligent Delivery drivers?

17 A. No, sir.

18 Q. There's been testimony in this case by
19 Miss Lucio that Tammie assigned her to drive with CJ
20 for two days. Is that reasonable?

21 A. I don't think so. I don't know CJ. I
22 don't know that we ever had anybody train a Diligent
23 driver.

24 Q. Did Parts Authority distribute any work
25 rules to the Diligent Delivery drivers?

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1 A. No, sir.

2 Q. Did Parts Authority require the
3 Diligent Delivery drivers to wear any particular
4 article of clothing?

5 A. No, sir.

6 Q. Do you know if the Diligent Delivery
7 drivers did wear any kind of clothing?

8 A. I do not know.

9 Q. How did Parts Authority treat its own
10 employee drivers?

11 A. We require them to wear a shirt that
12 says Parts Authority on it, we require them to help
13 out in the store when they're there if they're not
14 making deliveries.

15 Q. Do they do tasks, any other tasks that
16 the Diligent Delivery driver does not do?

17 A. Checking in or helping put up stock,
18 pulling orders, cleaning bathrooms. Whatever they
19 did in the store.

20 Q. Are there some delivery routes that
21 only Parts Authority employee drivers could do?

22 A. Regarding plate companies that we have
23 to have special prior authorization to get onto their
24 grounds, we cannot use Diligent Delivery to make
25 those delivers.

ARBITRATION -DAY TWO

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1 Q. Why couldn't you use a Diligent
2 Delivery driver?

3 A. I was never sure which Diligent driver
4 was showing up, and we had to pre-notify with contact
5 information and driver information for them to be
6 able to verify it.

7 Q. Are there any other tasks that only a
8 Diligent Delivery driver would do?

9 A. Only a Diligent Delivery driver?

10 Q. I'm sorry. That only a Parts Authority
11 driver would do.

12 A. No, sir.

13 Q. What about picking up money?

14 A. If there was cash to be picked up, we
15 would try to use a Parts Authority driver to pick it
16 up because we were not sure if the Diligent driver
17 was coming back to our location or not.

18 Q. Did Parts Authority track the identity
19 of the Diligent Delivery driver?

20 A. No, sir.

21 Q. Were Diligent Delivery drivers required
22 to perform the service personally, or could they send
23 somebody else?

24 A. We did not keep track if they were
25 performing or somebody else was performing it.

ARBITRATION -DAY TWO

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1 Q. Were Diligent Delivery drivers required
2 to ask Tammie if they wanted to have time off from
3 work?

4 A. No, sir.

5 Q. Does that make sense that they would
6 ask Tammie?

7 A. No, sir.

8 Q. Who would they ask, if you know?

9 A. I believe it would be Fred Rosenau at
10 Diligent.

11 Q. To whom did the Parts Authority
12 employee drivers report; who was their supervisor?

13 A. Their supervisor was Tammie.

14 Q. How were Parts Authority employee
15 drivers paid, if you know?

16 A. Paid by the hour.

17 Q. What is the Parts Authority employee
18 delivery driver's schedule?

19 A. They would cover the same amount of
20 hours, 8 to 5, 5:30 , 8:30 to 6 depending on what
21 shift we needed them for.

22 Q. Did they get a break?

23 A. They were required to take a 30-minute
24 break.

25 Q. Were Diligent Delivery drivers required

ARBITRATION -DAY TWO

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1 to take a 30-minute break?

2 A. We did not track Diligent drivers for
3 breaks.

4 Q. Did Parts Authority employee drivers
5 receive an employee handbook?

6 A. Yes, they did.

7 Q. Did Diligent Delivery drivers receive
8 an employee handbook?

9 A. No, they did not.

10 Q. Was Tammie authorized to coach or
11 discipline a Diligent driver?

12 A. No, she was not.

13 Q. Could a Parts Authority employee send a
14 substitute to do their work?

15 A. No, sir.

16 Q. Could a dispatcher or anyone else at
17 Parts Authority set the work schedule of a Diligent
18 Delivery driver?

19 A. No, sir.

20 Q. Were Diligent Delivery drivers
21 permitted access to the warehouse areas of the
22 Roswell facility?

23 A. No, sir.

24 Q. Where did they have to stay?

25 A. They were either sitting in vehicles,

ARBITRATION -DAY TWO

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1 or they could be in our break room.

2 Q. Miss Lucio has testified that she
3 arrived late from time to time, and on those
4 occasions Tammie would deny her a break.

5 First, does Parts Authority's agreement
6 with Diligent require Parts Authority to give
7 Diligent drivers a break?

8 A. No, sir.

9 Q. Would there be any occasion where
10 Tammie would deny a break; any reason for that?

11 A. We have no control of their breaks.
12 They can take them whenever they wanted to.

13 Q. Are you familiar with the
14 owner/operator agreement between Diligent Delivery
15 and the owner operators?

16 A. No, sir.

17 Q. You didn't negotiate, or didn't have
18 any input into how that contract was made?

19 A. No, sir.

20 Q. Do you know anyone else at Parts
21 Authority who had any input into that?

22 A. No, sir.

23 Q. Does Parts Authority have any other
24 customers in Georgia?

25 A. Yes.

ARBITRATION -DAY TWO

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1 Q. I'm sorry. Does Diligent Delivery have
2 other customers in Georgia?

3 A. Yes.

4 Q. Can you name some?

5 A. I don't know who they are.

6 Q. Other than supplying dedicated drivers,
7 are you aware of any other business that Diligent
8 does in Georgia?

9 A. They provide a co-op delivery service
10 to all their customers.

11 Q. What does that mean?

12 A. They pick up parts from those
13 customers' locations, take them back to their
14 warehouse, sort them by the cities they deliver to,
15 and then they deliver all the customers' packages on
16 that route.

17 ARBITRATOR MASUCCI: Could you explain
18 that again. I'm not understanding.

19 MR. PARRISH: Diligent would send their
20 drivers to their customers' locations, pick up
21 the parts they wanted them to deliver. Then
22 they would bring them back to their warehouse
23 and sort them by city, ZIP code for the drivers
24 to go out on route to deliver to all their
25 customers' customers.

ARBITRATION -DAY TWO

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1 ARBITRATOR MASUCCI: This is not Parts
2 Authority, it's the other customers they have?

3 MR. POTASHNICK: That's correct. Parts
4 Authority does use that service as well. Yes,
5 ma'am.

6 Q. In 2015 at least in Georgia, did Parts
7 Authority have any computerized route making
8 software?

9 A. No, sir.

10 Q. Did it ever create any specific routes
11 that had to be followed?

12 A. No, sir.

13 Q. How would it be decided if one or more
14 than one delivery went out at the same time?

15 A. The dispatcher would group ones that
16 were close together to give to one driver.

17 Q. Can you estimate for me how many of the
18 deliveries were grouped as opposed to single
19 deliveries from the Roswell store in 2015?

20 A. I would say probably 75/25. 75 percent
21 were grouped, and 25 percent were not.

22 Q. Did Tammie have an office in the
23 Roswell facility?

24 A. Yes, she did.

25 Q. Where was that located?

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1 A. It was located out beside the break
2 room.

3 Q. What would she do in her office as
4 opposed to being outside the office?

5 A. Processing credits to customers was the
6 primary.

7 Q. What percentage of her time was spent
8 doing that?

9 A. Probably 70 percent.

10 Q. So 70 percent of her time she's in her
11 office?

12 A. Yes.

13 MR. MARKS: Can we have three minutes?

14 ARBITRATOR MASUCCI: Yes.

15 (At this time, a brief recess was
16 taken.)

17 ARBITRATOR MASUCCI: Cross examination.

18 CROSS EXAMINATION

19 BY MR. FREI-PEARSON:

20 Q. Good morning, Mr. Parrish.

21 A. Good morning.

22 Q. What did you do to prepare for today's
23 testimony?

24 A. Reviewed questions I might be asked
25 with the Parts Authority lawyers.

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1 Q. How long did you spend there?

2 A. Hour, hour and a half.

3 Q. Do you know Miss Lucio?

4 A. No, I do not.

5 Q. Have you ever spoken to her?

6 A. Not to my knowledge.

7 Q. Have you ever seen her?

8 A. Not my knowledge.

9 Q. I'm going to call her Tammie?

10 Do you know Tammie?

11 A. I did know Tammie.

12 Q. How many times have you spoken with
13 Tammie?

14 A. Several. I mean she reported to me.

15 Q. Was she an honest person?

16 MR. MARKS: Objection.

17 ARBITRATOR MASUCCI: Answer the
18 question.

19 A. To my knowledge, yes.

20 Q. Are you aware of any communications or
21 interactions between Tammie and Miss Lucio?

22 A. I was not involved in any and never
23 heard of any.

24 Q. Are you aware of any communications or
25 interactions between Monica and Miss Lucio?

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1 A. I was not aware until recently about a
2 text message that was sent. That's the only
3 knowledge that I have.

4 Q. I think you testified earlier that you
5 weren't certain as to who CJ was. But just to be
6 clear, are you aware of any communications or
7 interactions between CJ and Miss Lucio?

8 A. No, I'm not.

9 Q. You testified earlier about Tammie
10 having an office.

11 Did Tammie move her office to the front
12 of the store?

13 A. The office is where it's always been.
14 It was in the same location all the time.

15 Q. Does Tammie have an office that's in
16 the front of the store with the glass covering so she
17 can observe people?

18 A. There is a window that's 8 feet up on
19 the wall in the office, and it looks out towards the
20 warehouse that you can't see out of.

21 Q. Is delivery of auto parts an important
22 part of Parts Authority's business?

23 A. Yes, it is.

24 Q. What job skills are needed by W2
25 delivery drivers that are not needed by temp delivery

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1 drivers?

2 A. I know for the W2 delivery drivers we
3 check MVR, that type of stuff. But for the other
4 drivers, I do not know.

5 ARBITRATOR MASUCCI: You check who?

6 MR. PARRISH: The W2, the Parts
7 Authority delivery drivers.

8 ARBITRATOR MASUCCI: You check what?

9 MR. PARRISH: Their MVRs.

10 Q. Motor vehicle records?

11 A. Yes.

12 Q. In terms of skills, you can't identify
13 any different skills?

14 A. No.

15 Q. What's a hot shot delivery?

16 A. It's a delivery that's not run on a
17 scheduled route that we try to deliver as fast as we
18 can.

19 Q. Do temp drivers take hot shot
20 deliveries?

21 A. What is a temp driver?

22 Q. A driver procured through Diligent.

23 A. Yes, they do.

24 Q. Speaking a moment ago about Tammie, do
25 you know whether or not Tammie recorded Miss Lucio's

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1 hours?

2 A. I do not.

3 Q. Did Tammie ever tell you whether or not
4 she recorded any temp driver's hours?

5 A. She did not.

6 Q. Did Tammie ever tell you whether or not
7 she awarded or withheld breaks to any drivers?

8 A. She did not.

9 Q. So you don't have any personal
10 knowledge one way or the other as to whether or not
11 Tammie recorded temp drivers' hours or awarded
12 breaks?

13 A. I do not.

14 Q. You testified earlier that deliveries
15 were grouped; correct?

16 A. Yes, sir.

17 Q. Is there a record that would reflect
18 when deliveries were grouped?

19 A. There is no specific tracking that
20 let's us know which ones are grouped.

21 Q. Is there a record that reflects which
22 deliveries are done by which driver?

23 A. There is a driver number that is
24 recorded.

25 Q. Where is that recorded?

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1 A. It's in our computer system. DST, I
2 believe, is the software.

3 Q. Do you know if records from that
4 computer system were produced in this litigation?

5 A. I am not.

6 Q. Were you involved in collecting
7 documents for this arbitration?

8 A. I was not.

9 Q. Did temp drivers have driver numbers?

10 A. They do have a driver number because
11 our system requires us to put a number.

12 Q. Going to the system, you can identify
13 all deliveries taken by Miss Lucio by driver number?

14 A. No. The driver numbers regarding
15 Diligent drivers are reused because we don't keep
16 track of the Diligent drivers' names.

17 Q. Are you aware that Tammie was regularly
18 in the front of the store?

19 MR. MARKS: Objection.

20 ARBITRATOR MASUCCI: Answer the
21 question.

22 A. I was not.

23 Q. Did you testify earlier that the
24 dispatchers don't track or care when temp drivers go
25 on breaks or when they leave; correct?

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1 A. Correct.

2 Q. Would the dispatchers have any records
3 of the names that went with the driver numbers?

4 A. Not to my knowledge.

5 Q. So I would like to give to you Joint
6 Exhibit 15.

7 A. Okay.

8 Q. Can you tell me what that is?

9 A. It looks like a text message.

10 Q. The earlier testimony was that that was
11 a text message between Miss Lucio and Monica. Would
12 you have any reason to believe that's not true?

13 A. I don't think so.

14 Q. Did the text message say Susana, I'm
15 calling you back. Please call back. It's 5:58, not
16 6 p.m. I did not dismiss you. Do not ask for any
17 favors.

18 MR. MARKS: So the record is clear, it
19 doesn't say that, but go ahead.

20 MR. FREI-PEARSON: Thank you for
21 interrupting my cross.

22 Q. That's the second time you did that.
23 Is that what it says? If I misread it, please
24 correct me.

25 A. It says what it says.

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1 Q. Can you square that with your earlier
2 testimony that dispatchers and managers don't care
3 about when drivers go on break or when they leave?

4 A. They are not to worry about it. This
5 is the first time I've ever seen or heard of it.

6 Q. Thank you for your time.

7 ARBITRATOR MASUCCI: Any redirect?

8 MR. MARKS: Just a little bit.

9 Looking at the text message, do you
10 have any idea what the subject matter of this
11 is?

12 MR. PARRISH: I do not.

13 MR. MARKS: Do you know that they're
14 talking about work?

15 MR. PARRISH: I do not.

16 MR. MARKS: Nothing further.

17 ARBITRATOR MASUCCI: Can you tell me
18 what your job responsibilities were? I know you
19 were in charge.

20 MR. PARRISH: Operations for stores.

21 ARBITRATOR MASUCCI: What does that
22 entail?

23 MR. PARRISH: Overseeing the inventory,
24 the drivers for Parts Authority, the
25 dispatchers, the floor managers, their

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1 day-to-day duties.

2 ARBITRATOR MASUCCI: How did you do
3 that?

4 MR. PARRISH: I talked to them on the
5 phone and go to the stores in person.

6 ARBITRATOR MASUCCI: In order to do
7 that, did you have regular conversations with
8 Tammie and Monica too?

9 MR. PARRISH: I did have conversations
10 with Tammie and Monica.

11 ARBITRATOR MASUCCI: And which drivers
12 did you actually talk to?

13 MR. PARRISH: I did not talk to the
14 drivers. I only talked directly to them.

15 ARBITRATOR MASUCCI: To Tammie --

16 MR. PARRISH: And Monica.

17 ARBITRATOR MASUCCI: -- and Monica.

18 I think that you testified that Parts
19 Authority drivers were not permitted to have
20 somebody replace them if they weren't going to
21 be in on a particular day; correct?

22 MR. PARRISH: Yes, ma'am.

23 ARBITRATOR MASUCCI: Were you aware of
24 any instance where a Diligent driver was covered
25 by someone that they asked to replace them?

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1 MR. PARRISH: No, ma'am.

2 ARBITRATOR MASUCCI: Do you know of any
3 instructions that Tammie might have given to a
4 Diligent driver to advise them that they could
5 not have somebody else cover their work?

6 MR. PARRISH: No, ma'am.

7 ARBITRATOR MASUCCI: That's all I have.
8 Thank you.

9 MR. FREI-PEARSON: Thank you.

10 ARBITRATOR MASUCCI: Thank you very
11 much.

12 MR. MARKS: We will go right into Fred.

13 ARBITRATOR MASUCCI: Mr. Rosenau, this
14 is an arbitration hearing between Susana Lucio
15 and Parts Authority. I'm going to have the
16 court reporter administer the oath.

17 Will you raise your right hand, please.

18 MR. ROSENAU: Yes.

19 F R E D R O S E N A U, a witness appearing via
20 videotape herein, having been first
21 duly sworn by Terri Fudens, a Notary
22 Public of the State of New York, was
23 examined and testified as follows:

24 ARBITRATOR MASUCCI: Mr. Marks, I'm
25 going to ask you again to slow down and wait

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1 until the person answers, because there will be
2 a delay.

3 DIRECT EXAMINATION

4 BY MR. MARKS:

5 Q. Good morning, Fred. How are you?

6 A. Good morning. Fine, thank you.

7 Q. I'm trying to get used to the delay or
8 lag, so I'm going to be slower than normal.

9 Could you tell us, please, where you
10 are employed?

11 A. I'm operations manager for Diligent
12 Delivery Systems in Atlanta, George.

13 Q. How long have you had that role?

14 A. February will be nine years.

15 Q. What are your duties and
16 responsibilities, included in being an operations
17 manager?

18 A. Contract engagements, things of that
19 nature. Day-to-day operations.

20 Q. To whom do you report?

21 A. Tom Baker.

22 Q. What's his job title?

23 A. General manager.

24 Q. Could you describe Diligent's business
25 in the Georgia area?

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1 A. I'm sorry. Repeat that.

2 Q. Yes. What does Diligent do in the
3 Georgia area?

4 A. We provide delivery, we provide service
5 and logistics for different clients.

6 Q. Could you tell me some of the clients
7 that you provide that service for?

8 A. Parts Authority being one, World Pac,
9 IMC.

10 Q. World Pac is W-O-R-L-D P-A-C?

11 A. Correct.

12 Q. Does Diligent provide a similar service
13 to World Pac and IMC that it provides to Parts
14 Authority in Georgia?

15 A. That is correct.

16 Q. Now a little more specifically, what
17 services does Diligent provide to Parts Authority?

18 A. We service them with logistics,
19 delivery of parts to their clients or to their
20 customers.

21 Q. Do you provide Parts Authority with
22 coverage for dedicated delivery?

23 A. Correct. Dedicated and some co-op.

24 Q. What is co-op?

25 A. Basically it's a division where drivers

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1 deliver for more than one customer in the Atlanta
2 area.

3 Q. Are you familiar with claimant Susana
4 Lucio?

5 A. Yes.

6 Q. She's sitting here. I don't know if
7 you can see her. Do you recognize her?

8 A. No, I can't recognize anybody.

9 Q. When do you recall first meeting
10 Miss Lucio?

11 A. Sometime I guess in May, like three
12 years ago maybe.

13 Q. What was the nature of your meeting?

14 A. She and I met to negotiate some of the
15 opportunities with Diligent.

16 Q. So Miss Lucio was contracted with
17 Diligent as an owner/operator?

18 A. Not at the time.

19 Q. But that was the purpose of the
20 meeting?

21 A. Correct.

22 Q. Did you discuss with her the
23 opportunity to accept an engagement as a Diligent
24 Delivery driver?

25 A. Yes.

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1 Q. Did you provide her at that time with
2 documentation about becoming an owner/operator with
3 Diligent Delivery?

4 A. Well, documentation is like the
5 contract?

6 Q. Yes.

7 A. Yes.

8 Q. Go ahead. Tell me how it went.

9 A. Well, basically we sit down and talk
10 about the opportunities, and I kind of go over
11 everything, who we are, what we do.

12 Then she provides me with some
13 documents that I need for corporate purposes,
14 contract purposes. And then we go into -- if she
15 agrees and she's interested, then we go into the
16 contract.

17 Q. Now are there written documents that
18 you provided to Miss Lucio when you met with her?

19 A. Yes. The contract is a written
20 document.

21 Q. There's also other documents, FAQs and
22 proposals and other things?

23 A. That's all part of the contract.

24 Q. At that meeting, did you allow
25 Miss Lucio time to review those materials?

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1 A. Yes. Absolutely.

2 Q. Did you ever tell her that she had to
3 hurry up and couldn't read them?

4 A. Absolutely not.

5 Q. Were you staring at her making her feel
6 uncomfortable if she didn't sign right away?

7 A. No. As a matter of fact, I give
8 them -- after I give them the instructions, sometimes
9 I'll just leave the room and give them that time to
10 fill it out. When that's completed, then I will come
11 in and we'll discuss certain things. If she has any
12 questions, I go over and make sure that areas of the
13 documents are signed and that type of thing.

14 Q. So did you pressure her in any way to
15 sign the contract?

16 A. No, sir.

17 Q. When you were meeting with Miss Lucio,
18 did she ask you any questions or express any concerns
19 about contracting with Diligent, but working for or
20 at Parts Authority?

21 A. To be honest, it's been so long, I
22 can't -- I can't recall.

23 Q. But Miss Lucio entered into a contract
24 with Diligent; correct?

25 A. That is correct.

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1 Q. So I think it's undisputed that she
2 agreed to and took an engagement at Parts Authority
3 for \$2,300 a month.

4 Can you explain how the payments were
5 made to Diligent Delivery drivers who have accepted a
6 monthly engagement at Parts Authority?

7 A. Yes. We pay twice a month. I want to
8 say that she was contracted with us. Payouts or
9 settlement payouts were on the 20th and the 5th of
10 every month. And basically the 2,300 is divided into
11 two settlements.

12 So, yes, she would get that divided
13 amount on the 20th and on the 5th of every month.

14 Q. Would she get the same amount every
15 half month?

16 A. If she worked the complete cycle, yes.

17 Q. What is the complete cycle?

18 A. Our cycles go from the 1st to the 15th.
19 That payout is on the 20th. From the 16th to the end
20 of the month -- I say the end of the month because it
21 could be 28 days, 30 or 31, that payout would be on
22 the 5th.

23 Q. What if she didn't work the complete
24 cycle?

25 A. Then she would be deducted a day.

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1 Depending on how many days she did not work, that
2 amount would be deducted.

3 Q. Can you explain how that amount was
4 calculated, the deduction was calculated?

5 A. If you take the 2,300 and divide it
6 into two, because they paid twice a month, that gives
7 you a figure, I think, of \$1,150. Then depending on
8 how many days were in the cycle, that's divided into
9 that figure which would give you a daily rate.

10 And that fluctuates. Even though the
11 2,300 is still the same, that daily rate will
12 fluctuate based on the cycle.

13 Q. To give an example here, if there were
14 14 days in a cycle and one day was missed, how much
15 wages or pay would be deducted?

16 A. Take that 14 days -- you want me to do
17 the math?

18 Q. If you could tell me the fraction of
19 which you're computing it, that would work?

20 A. You divide the 14 days into the 1,150.
21 That would give you the daily rate.

22 Q. If a cycle had 12 days, what would be
23 the amount of a missed day?

24 A. The same math.

25 Q. 12? Are you doing calculations now?

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1 A. Yes.

2 Q. I don't think that's necessary.

3 Is the fraction 1 over 12?

4 A. Yes. It would be \$95.83 per day.

5 Q. In addition to missing days, was there
6 any administrative or other charges taken from the
7 payment to the owner operators?

8 A. Yeah. All the owner operators
9 understand during the contract procedure that there
10 would be a \$2 a day administration fee.

11 Q. That money is taken by whom, Diligent?

12 A. Diligent. That is correct.

13 Q. So Miss Lucio accepted an engagement at
14 Parts Authority; is that right?

15 A. That is correct.

16 Q. And what time period did that
17 engagement encompass? Like was there an hourly
18 schedule?

19 A. Well, yes. Miss Lucio understood that
20 it's from 8 to 6 Monday through Friday, and Saturday
21 would be either 8 to 3 or 10 to 5.

22 Q. You told her that?

23 A. Yes.

24 Q. Was Miss Lucio required to personally
25 perform services during all of those hours?

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1 A. Yes. Yes.

2 Q. So she could not send a substitute for
3 herself?

4 A. Yes, she absolutely could send a
5 substitute. I'm required to make sure that we have a
6 driver there from 8 to 6 Monday through Friday, 8 to
7 3 on Saturday, or 10 to 5 on Saturday.

8 If for any reason she could not perform
9 or be there, she has the right to do so.

10 Q. If she didn't send a substitute for
11 herself, who would have to cover that?

12 A. I would send one.

13 Q. Now when you contracted with
14 Miss Lucio, did you tell her where to go?

15 A. Yes.

16 Q. Other than telling her where to go and
17 the hours that she had to do that for, did you give
18 her any other instructions about the specific
19 engagement?

20 A. Other than she would be providing the
21 client, my client, Parts Authority with the service
22 of delivering parts, no.

23 Q. In connection with this action, did I
24 ask you to review your cell phone to see if you had
25 any text messages with Miss Lucio?

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1 A. I do not have any text messages.

2 Q. There's a text message that Miss Lucio
3 produced from you. We'll address that perhaps.

4 Other than text messages, do you recall
5 speaking to Miss Lucio during the period of time that
6 she was engaged to provide delivery services at Parts
7 Authority?

8 A. It's been so long. I can't say yes or
9 no on that. I don't recall.

10 Q. If Miss Lucio was not going to provide
11 services on a given day, or half a day, or some other
12 point of time, was she supposed to advise anyone?

13 A. Yes. She was to advise me.

14 Q. Was she required to advise the client,
15 Parts Authority?

16 A. No. No way.

17 Q. Are there owner operators who are
18 contracted with Diligent who have subcontractors
19 working for them?

20 A. Yes. Actually, the contract states
21 that they can have subcontractors.

22 Q. I know it states it, but in practice
23 does that happen?

24 A. Absolutely.

25 Q. Did Miss Lucio check in with you on a

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1 daily basis?

2 A. They're required to. Whether she did
3 or not, I don't recall.

4 Q. What are they required to do?

5 A. If they're going to be going to their
6 dedicated location, the driver has to call and say
7 they're on their way, they're there or they're not
8 going to be there.

9 Q. What about during the day, do they call
10 you if they're going to be late or have a problem
11 with a delivery?

12 A. They can. If they have some issues out
13 there, they can call me, yes.

14 Q. If Miss Lucio had asked you for a time
15 off or told you she wasn't going to go to work, could
16 you deny that request?

17 A. No.

18 Q. Did you ever deny a request from
19 Miss Lucio for time off?

20 A. No.

21 Q. Do you recall how Miss Lucio's
22 engagement with Diligent came to an end?

23 A. It's been so long. I really don't
24 know. I think she had an issue with a child, and I
25 think it was definitely something that she

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1 terminated. We didn't terminate her.

2 Q. Tammie, the Parts Authority store
3 manager, was she Miss Lucio's boss?

4 A. Was she Miss Lucio's boss?

5 Q. Yes.

6 A. Absolutely not.

7 Q. Did you ever tell Miss Lucio that
8 Tammie is your boss, you have to do what Tammie says?

9 A. Absolutely not.

10 Q. Do you recall Miss Lucio talking to you
11 or complaining to you about how she was being treated
12 by Parts Authority?

13 A. No, I don't recall anything like that.

14 Q. Do you recall anyone from Parts
15 Authority, Tammie, or Glen, or anybody else, talking
16 to you about Miss Lucio's performance or her
17 attendance or her timeliness; do you recall any of
18 that?

19 A. No.

20 Q. Did anyone at Parts Authority have the
21 authority to tell Miss Lucio how to perform her
22 delivery services?

23 A. No, not that I'm aware of.

24 Q. What was Parts Authority's role with
25 respect to Miss Lucio's engagement?

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1 A. Really I don't -- there's really no
2 role whatsoever. She was there to provide the
3 service for my client. No one there with Parts
4 Authority had the right, or as far as I'm concerned
5 in the years that I've been here, that there's been a
6 time where they told the driver what to do or how to
7 do it. The role really is the parts come off,
8 they're ordered, they're given to the drivers and
9 they go out and deliver.

10 Q. Are you paid any money by Parts
11 Authority?

12 A. Me myself?

13 Q. Yes.

14 A. No. I have not been paid by Parts
15 Authority, not at all.

16 Q. Do you discuss with Parts Authority how
17 owner operators are performing?

18 A. Have I ever?

19 Q. Yes.

20 A. I don't know. I think occasionally I
21 would ask if everything was fine. That's part of the
22 client relationship.

23 MR. MARKS: I don't have anything
24 further at this moment.

25 MR. FREI-PEARSON: Can we have a

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1 10-minute break?

2 ARBITRATOR MASUCCI: We're going to
3 take a 10-minute break. Don't go anyplace.

4 (At this time, a brief recess was
5 taken.)

6 MR. MARKS: I have one more question.

7 Q. Just one other question, Fred. I
8 wanted to ask you about a driver named CJ. Do you
9 know who that is?

10 A. It's been a long time. CJ, I don't
11 recall.

12 Q. Miss Lucio testified that when she
13 started at Parts Authority, she drove for two days
14 with a driver named CJ.

15 Do you know a Diligent employee named
16 CJ?

17 A. I do not have an employee named CJ and
18 I don't recall. It might be a nickname or something.
19 I don't recall.

20 Q. Would Tammie have the authority to
21 assign Miss Lucio to drive with some other driver for
22 training purposes?

23 A. No, she would not.

24 Q. Did you assign Miss Lucio to train with
25 some other Diligent Delivery driver?

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1 A. Well, I don't recall, but it's not
2 considered training. It's considered more of like an
3 orientation.

4 Q. What would they orient to?

5 A. Probably just the SOPs and maybe get
6 familiar with how things are done.

7 MR. MARKS: Okay. Thanks. Now we'll
8 be subject to cross-examination by plaintiff's
9 counsel.

10 CROSS EXAMINATION

11 BY MR. POTASHNICK:

12 Q. Mr. Rosenau, my name is Mark
13 Potashnick. Can you hear me?

14 A. Yes, sir.

15 Q. I'm one of the attorneys representing
16 the claimant in this arbitration case.

17 ARBITRATOR MASUCCI: Mr. Potashnick,
18 I'm going to ask you the same thing. Slow down.

19 MR. POTASHNICK: I will try my best.

20 ARBITRATOR MASUCCI: Thank you.

21 Q. You said that there's orientation
22 towards SOP. What is an SOP?

23 A. Like a standard operating procedure,
24 like maybe like an area of knowledge or just how
25 invoices look and things that they need to really

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1 kind of remember what's going on out there on the
2 road that they're doing deliveries.

3 Q. Is one of the SOPs for Parts Authority
4 to bring invoices with the delivery drivers to their
5 deliveries?

6 A. Correct.

7 Q. Is one of the SOPs for Diligent
8 Delivery drivers working at Parts Authority to obtain
9 the Parts Authority customer signature to verify that
10 the delivery was completed?

11 A. Yes. A POD. Yes, Proof of Delivery,
12 that is correct.

13 Q. Is one of the SOPs for Diligent
14 Delivery drivers working at Parts Authority to call
15 Parts Authority's supervisor if they're asked
16 questions or provided comments or criticisms by Parts
17 Authority's customers on deliveries?

18 MR. MARKS: Compound. I object.

19 ARBITRATOR MASUCCI: Just break it
20 down.

21 Q. Is one of the SOPs for Diligent
22 Delivery drivers working at Parts Authority to call
23 Parts Authority's manager if the customer has
24 questions?

25 A. Yes, they can. They can call me or

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1 Parts Authority.

2 Q. Is one of the SOPs at Parts Authority
3 for the Diligent drivers to call Parts Authority's
4 supervisor if the customer of Parts Authority has
5 complaints while the driver is at the delivery
6 location?

7 A. No. Not that I'm aware of.

8 Q. What is the SOP or stand operating
9 procedure for a Diligent Delivery driver working at
10 Parts Authority who encounters a complaint by a
11 customer at a delivery?

12 A. Well, usually the customer would make
13 that call to the supervisor.

14 Q. Is one of the SOPs for a Diligent
15 Delivery driver working at Parts Authority to write
16 down the time a delivery is made on an invoice or a
17 bill?

18 A. I'm not sure. Some of them have that,
19 but I'm not clear on the Parts Authority one, if
20 their invoice showed that.

21 Q. Okay. Is one of the SOPs for a
22 Diligent Delivery driver working at Parts Authority
23 to ask a Parts Authority customer if they have any
24 returns?

25 A. Yes.

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1 Q. Is one of the SOPs for a Diligent
2 Delivery driver working at Parts Authority to ask a
3 customer if they have any defective products?

4 A. That usually falls under the returns.
5 I don't know specifically.

6 Q. I'm sorry. Do you know what a core is
7 at Parts Authority?

8 A. Sure.

9 Q. Is one of the SOPs at Parts Authority
10 for Diligent Delivery drivers working at Parts
11 Authority to ask if the customer has any cores to be
12 returned to Parts Authority?

13 A. I believe it's one of those things
14 where if they're delivering a package or a product
15 that requires a core, I think it's already listed in
16 a note to pick up a core.

17 Q. Can you tell us what a core is, please?

18 A. A core -- I believe a core is just a
19 product, like an alternator or something of that
20 nature that can be remanufactured. So when they
21 deliver a new, let's say, alternator, then the
22 customer will provide them with an old same type
23 product to take back.

24 Q. Is one of the SOPs for Diligent
25 Delivery drivers working at Parts Authority to bring

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1 back payment from the Parts Authority customer to
2 Parts Authority?

3 A. Yes.

4 Q. Is one of the SOPs for a Diligent
5 driver working at Parts Authority to only bring back
6 a cash payment if Parts Authority designates the
7 customer as to be paying their bills by c.o.d. or
8 cash on demand, cash on delivery?

9 A. That might also be indicated on the
10 invoice, but they do bring back cash, and they do
11 bring back checks or credit cards.

12 Q. Can a Diligent Delivery driver working
13 at Parts Authority bring back some form of payment
14 other than cash if the customer is designated as a
15 c.o.d. payer?

16 A. Yes. Like a check or a credit card,
17 yes.

18 Q. Can the Diligent Delivery driver
19 working at Parts Authority make the decision that the
20 customers can pay by a check or credit card when
21 Parts Authority specifies that the customer must pay
22 only by cash?

23 A. Absolutely not.

24 Q. You said during your direct testimony
25 that it's been so long that you don't remember most

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1 of your interactions with Miss Lucio.

2 Did I get that right?

3 A. Well, tell me the questions that were
4 asked. I don't remember. If I said I didn't
5 remember, then I don't remember.

6 Q. Do you have any specific recollection
7 of what was said during your initial meeting, your
8 first meeting with Miss Lucio?

9 A. Well, during the negotiating process or
10 meeting, we -- I'm sure we went over the times, and
11 we went over what she would be doing and things like
12 that, but that's it.

13 Q. Okay. What times are you referring to
14 that you went over with Miss Lucio the first time you
15 met with her?

16 A. Times of the assignment, which would be
17 8 to 6 Monday through Friday, or 8 to 3 or 10 to 5 on
18 Saturdays.

19 Q. Do you have any specific recollection
20 of anything else that was discussed during that
21 meeting?

22 A. No.

23 Q. You said sometimes that you leave the
24 room to let a prospect read through the documents.

25 Do you have any specific recollection

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1 of whether or not you did that during your first
2 meeting with Miss Lucio?

3 A. I do not.

4 Q. Did you personally observe any
5 communications or interactions between Tammie and
6 Miss Lucio?

7 A. No, sir.

8 Q. Did you personally observe any
9 communications or interactions between Monica, the
10 dispatcher, at the Roswell Parts Authority and
11 Miss Lucio?

12 A. No, sir.

13 Q. Did you personally observe any
14 communications or interactions between any other
15 delivery driver at the Roswell Parts Authority and
16 Miss Lucio?

17 A. Not that I recall, no.

18 Q. Could Miss Lucio choose not to bring
19 back returned parts from Parts Authority customers?

20 A. Yes, she could. Yes, if she decided
21 to. And then I guess we would figure another way of
22 getting it.

23 But It's part of the engagement, but,
24 you know, I don't have a right to tell them that they
25 can or can't do something that they refuse to do.

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1 Q. Do you have any firsthand personal
2 knowledge or personal observance of whether or not
3 anybody at Parts Authority told Miss Lucio whether
4 she could choose to not bring back parts from Parts
5 Authority's customers?

6 A. I do not.

7 Q. Do you have any firsthand knowledge or
8 personal observation about whether anybody at Parts
9 Authority told Miss Lucio that she could choose not
10 to obtain the signatures to verify deliveries?

11 A. I do not.

12 Q. Do you have any firsthand knowledge
13 about whether or not anybody at Parts Authority told
14 Miss Lucio that she could choose not to write down
15 delivery times on Parts Authority's bills?

16 A. I do not.

17 Q. Do you have any firsthand knowledge
18 about whether or not anybody at Parts Authority told
19 Miss Lucio that she either had to bring back Parts
20 Authority's invoices or she didn't have to bring back
21 those invoices?

22 A. I do not.

23 Q. Do you have any firsthand knowledge
24 about whether or not anybody at Parts Authority told
25 Miss Lucio that she had to bring back Parts

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1 Authority's -- Parts Authority receipts, forms for
2 her deliveries or not bring back those receipt forms?

3 A. I do not.

4 Q. Do you have any firsthand knowledge or
5 personal observation about whether anybody at Parts
6 Authority gave any instructions to Miss Lucio about
7 how to perform her duties?

8 A. I do not.

9 Q. Isn't it true that delivery of auto
10 parts is an important part of Parts Authority's
11 business?

12 A. Correct.

13 MR. POTASHNICK: That's all we have.

14 ARBITRATOR MASUCCI: Anything else.

15 FURTHER EXAMINATION

16 BY MR. MARKS:

17 Q. Is it consistent with the relationship
18 between Parts Authority and Diligent for Parts
19 Authority's supervisor to issue instructions to
20 delivery drivers?

21 A. Can you repeat that?

22 Q. Sure. Is it consistent with the
23 relationship between Parts Authority and Diligent for
24 Parts Authority's supervisors to instruct or direct
25 Diligent Delivery drivers?

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1 A. No.

2 MR. MARKS: I have nothing further.

3 ARBITRATOR MASUCCI: Mr. Rosenau, I'm
4 the arbitrator. I have a few questions for you.
5 One preliminary one that I know the court
6 reporter wants to clean up.

7 Is your name Fred or something else,
8 Frederick?

9 MR. ROSENAU: Fred.

10 ARBITRATOR MASUCCI: Okay.

11 When Miss Lucio came to meet with you,
12 did she come specifically for a Parts Authority
13 engagement?

14 MR. ROSENAU: No. Actually it was for
15 an opportunity, and the opportunity just
16 happened to be a Parts Authority engagement.

17 ARBITRATOR MASUCCI: Before she signed
18 the agreement, how many times did you meet with
19 her?

20 MR. ROSENAU: Just that day.

21 ARBITRATOR MASUCCI: How long was the
22 meeting?

23 MR. ROSENAU: I'm not sure.

24 ARBITRATOR MASUCCI: If you recall.

25 MR. ROSENAU: I do not recall.

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1 ARBITRATOR MASUCCI: How many different
2 Diligent drivers do you work with in any given
3 month?

4 MR. ROSENAU: I have 178, I believe.

5 ARBITRATOR MASUCCI: How long does
6 someone generally stay on as a Diligent driver?

7 MR. ROSENAU: I've had drivers that
8 have been with us for -- I've been with the
9 company nine years. The drivers have been with
10 us for well over that, 13, 14, 15 years.

11 ARBITRATOR MASUCCI: Do you have some
12 drivers who act as supervisors or managers of
13 their own group of drivers?

14 MR. ROSENAU: Yes. Those would be
15 considered master contractors. We have
16 subcontractors that they employ.

17 ARBITRATOR MASUCCI: Are there any
18 drivers that you have who advertise their
19 services to other clients while engaged with
20 Diligent?

21 MR. ROSENAU: I'm not aware of that.

22 ARBITRATOR MASUCCI: Is there any
23 prohibition for them doing that?

24 MR. ROSENAU: They're owner operators.
25 They can pretty much do as they please.

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1 ARBITRATOR MASUCCI: Just give me a
2 second, please.

3 MR. ROSENAU: Yes, ma'am.

4 ARBITRATOR MASUCCI: Do you recognize
5 the name of Mr. Oliveri?

6 MR. ROSENAU: Renan? Yes, I'm
7 familiar.

8 ARBITRATOR MASUCCI: Was he in a
9 similar role to that of Miss Lucio?

10 MR. ROSENAU: That's correct. He was
11 an owner/operator for us.

12 ARBITRATOR MASUCCI: Might he have
13 suggested to Miss Lucio to see you.

14 MR. ROSENAU: I believe that is how we
15 became -- she found out about us. I believe so.

16 ARBITRATOR MASUCCI: I don't have any
17 other questions right now. Thanks.

18 MR. POTASHNICK: One quick question.

19 Was Miss Lucio a master contractor?

20 MR. ROSENAU: Well, she didn't have --
21 as far as I remember, she didn't have anybody
22 that I'm familiar with that she worked under.
23 No, I'm not sure.

24 MR. POTASHNICK: Mr. Rosenau, when you
25 responded to Mr. Marks' question about

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1 consistency with how Parts Authority treats
2 delivery drivers coming through Diligent.

3 Was that based on any personal
4 observation of treatment of Miss Lucio within or
5 by Tammie around that store?

6 MR. ROSENAU: No.

7 MR. POTASHNICK: Okay.

8 ARBITRATOR MASUCCI: One other
9 question. You may or may not recall. It may be
10 an unfair question, but do you believe that
11 Miss Lucio understood the terms and conditions
12 of the agreement that you asked her to sign?

13 MR. ROSENAU: I do. I don't really
14 recall. They all get an opportunity to ask
15 questions, and I just don't recall if she asked
16 any specific questions.

17 ARBITRATOR MASUCCI: The people who
18 come to you, had they all been independent
19 operators elsewhere or have served in that
20 capacity?

21 MR. ROSENAU: Well some most definitely
22 are experienced owner operators, and a very
23 small amount are not.

24 ARBITRATOR MASUCCI: Okay. Thank you.

25 Mr. Marks, do you have anything else?

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1 MR. MARKS: I don't.

2 MR. POTASHNICK: No.

3 ARBITRATOR MASUCCI: Thank you very
4 much.

5 MR. ROSENAU: Am I good for the day?

6 ARBITRATOR MASUCCI: You're good for
7 the day.

8 MR. ROSENAU: Thank you everyone.

9 ARBITRATOR MASUCCI: Mr. Spicker, I'm
10 the arbitrator, Deborah Masucci. The court
11 reporter will administer the oath of office to
12 you.

13 P A U L S P I C K E R, a witness herein
14 appearing via videotape, having been
15 first duly sworn by Terri Fudens, a
16 Notary Public of the State of New
17 York, was examined and testified as
18 follows:

19 ARBITRATOR MASUCCI: Mr. Marks.

20 DIRECT EXAMINATION

21 BY MR. MARKS:

22 Q. Allow me to ask you a few questions,
23 Paul. Just tell us what your job is and where you
24 work.

25 A. I work for Diligent Delivery Systems.

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1 I'm in Houston, Texas at the corporate office. I am
2 general counsel and vice president of Human
3 Resources.

4 Q. You don't know who Miss Lucio is; do
5 you?

6 A. Not personally. I do know that she's
7 an independent contractor for us.

8 Q. Okay. How long has Diligent been in
9 business?

10 A. Diligent started I think in '94, so
11 about 24 years.

12 Q. And when did it start doing business
13 with Parts Authority?

14 A. I've been employed since 2016. I know
15 it was prior to me. I want to say that the
16 agreements I remember maybe started in 2010.

17 Q. Does Diligent Delivery have any
18 ownership interest in Parts Authority?

19 A. No, none whatsoever.

20 Q. Does Parts Authority have any ownership
21 interest in Diligent Delivery?

22 A. No, not at all.

23 Q. Prior to Miss Lucio's claim, are you
24 aware of any owner/operator in Atlanta, Georgia, BBB,
25 making a claim for wages or FLSA violations?

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1 A. No. This is the first claim in that
2 regard from an independent contractor I'm aware of
3 for BBB Logistics.

4 Q. Other than Parts Authority, does BBB
5 Logistics have any other customers?

6 A. We do. We have various other clients
7 and customers.

8 Q. And Diligent generally has other
9 clients as well?

10 A. Yes. Lots of clients, otherwise we
11 couldn't stay in business.

12 Q. Does Diligent provide services other
13 than the contracting with dedicated delivery drivers?

14 A. We do. We're a logistics company, so
15 we provide warehousing, route optimization, cross
16 docking, route creations, scanning. So various
17 logistical services.

18 MR. MARKS: That's all I have for
19 today. Thank you.

20 MR. FREI-PEARSON: If we could have
21 five or 10 minutes.

22 ARBITRATOR MASUCCI: Can you just stay
23 on hold for five to 10 minutes?

24 MR. SPICKER: Absolutely.

25 (At this time, a brief recess was

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1 taken.)

2 ARBITRATOR MASUCCI: Mr. Spicker.

3 MR. SPICKER: Yes, ma'am.

4 ARBITRATOR MASUCCI: Thank you.

5 CROSS EXAMINATION

6 BY MR. FREI-PEARSON:

7 Q. Good morning, Mr. Spicker. My name is
8 Jeremiah Frei-Pearson. I'm claimant's counsel.

9 A. Good morning.

10 Q. I may have misunderstood your testimony
11 earlier. How many times has Diligent and/or a
12 company that it contracts with been sued for
13 misclassifying delivery drivers either in court or in
14 arbitration?

15 MR. MARKS: It's a compound question,
16 and it's not the testimony earlier.

17 A. Diligent has about 18 different
18 entities. I would actually have to go back and look
19 at that. I would not have an answer off the top of
20 my head.

21 I do know that with BBB Logistics where
22 Susana Lucio worked, this is the first occurrence.

23 Q. For Diligent, and I understand there's
24 different entities, but when we talk about different
25 lawsuits and different arbitrations, are we talking

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1 more than one?

2 A. For arbitrations, yes.

3 Q. Are we talking more than 10?

4 A. What time period are you talking about?

5 Q. 2015 to the present, and I want to be

6 clear --

7 ARBITRATOR MASUCCI: Wait.

8 MR. FREI-PEARSON: My apologies.

9 ARBITRATOR MASUCCI: Just wait until
10 you hear the entire question please, and wait
11 until you hear the entire answer before you ask
12 another question. So let Mr. Frei-Pearson
13 actually ask his question again.

14 MR. SPICKER: Sure.

15 Q. I want to be clear. I'm talking about
16 lawsuits against Diligent and against the companies
17 which it contracts with for misclassifying the
18 drivers who Diligent claims are independent
19 contractors.

20 Do you understand that?

21 A. I do.

22 Q. Would you say from 2015 to 2018 there
23 have been more than 10 such lawsuits or arbitrations?

24 A. Yes, I would.

25 Q. Would you say there have been more than

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1 50?

2 A. Yes, I would say there's more than 50.

3 Q. Would you say there's more than 80?

4 A. Probably right at about 80, if I had to
5 say.

6 Q. The same question with relationship to
7 Diligent and/or the companies with whom it contracts
8 with, according to your testimony, to provide
9 independent driver operators. How many Attorney
10 General investigations?

11 A. I don't believe there's any AG
12 investigations that I'm aware of.

13 MR. FREI-PEARSON: No further
14 questions.

15 MR. MARKS: Paul, has there been any
16 finding by the arbitrator that any driver was
17 misclassified.

18 MR. SPICKER: Could you repeat the
19 question. You kind of broke up there. Sorry.

20 MR. MARKS: Yes. In the arbitrations
21 where there's been a result, has there been a
22 finding that an independent contractor driver
23 was an employee?

24 MR. SPICKER: I don't believe there has
25 been.

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1 MR. MARKS: Has there been any finding
2 that the independent contractor was properly
3 classified?

4 MR. SPICKER: Yes.

5 MR. MARKS: I have nothing further.

6 MR. FREI-PEARSON: In which arbitration
7 was there a finding that the employee was
8 properly classified?

9 MR. SPICKER: There was two that I'm
10 aware of. I can't remember the names off the
11 top of my head. I think they were both out of
12 New York.

13 MR. FREI-PEARSON: Were those in front
14 of Arbitrator Feliu?

15 MR. SPICKER: I believe that's correct.

16 MR. FREI-PEARSON: Did Arbitrator Feliu
17 hold that the arbitrators were properly
18 classified, or did he hold that Diligent was not
19 the proper defendant and that the party with
20 authority was Parts Authority?

21 MR. MARKS: Why don't you offer the
22 decisions to the arbitrator?

23 MR. FREI-PEARSON: I certainly will,
24 but I'm asking him a question. Again please, if
25 you have an objection, make it, but please don't

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1 interrupt.

2 MR. MARKS: I object. It's not the
3 best evidence to ask his opinion of what the
4 holding was. We're all lawyers and we can make
5 our decision.

6 ARBITRATOR MASUCCI: Would you answer
7 the question please?

8 MR. SPICKER: Could you repeat the
9 question one more time?

10 MR. FREI-PEARSON: I will break it
11 down. Did Arbitrator Feliu hold that the
12 drivers were properly classified?

13 MR. SPICKER: I believe that was the
14 finding based on the parties in the matter, yes.

15 MR. FREI-PEARSON: Exactly.

16 Didn't Arbitrator Feliu hold that
17 control was exercised by Parts Authority, not
18 Diligent?

19 MS. STILLER: We have to object to
20 that, and that is misleading because Parts
21 Authority was not even a party to that case.

22 ARBITRATOR MASUCCI: If you want to
23 offer the arbitration award and put that in
24 evidence, that's the best evidence.

25 I don't want his interpretation of what

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1 the arbitrator said.

2 MR. FREI-PEARSON: We'll submit it to
3 your Honor.

4 ARBITRATOR MASUCCI: My understanding
5 is that all of the employment decisions of the
6 AAA are publicly available documents.

7 MR. FREI-PEARSON: That's correct. We
8 weren't counsel, so we have them and we can
9 share them with your Honor.

10 MR. MARKS: I don't think they were
11 publicly available documents unless we agree to
12 make them available.

13 ARBITRATOR MASUCCI: The parties can
14 have their names redacted, but all employment
15 case arbitration awards are publicly available.
16 And just employment cases, not labor. Just
17 employment cases.

18 MR. FREI-PEARSON: I have one further
19 question.

20 Of the approximately 80-ish
21 litigations/arbitrations that have been filed,
22 how many have been settled?

23 MR. MARKS: I object.

24 MR. SPICKER: I'm sorry?

25 MR. FREI-PEARSON: How many have been

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1 settled?

2 MR. MARKS: I object again.

3 MR. SPICKER: I would say roughly 15.

4 ARBITRATOR MASUCCI: So anything else?

5 MR. FREI-PEARSON: No, thank you.

6 MR. MARKS: No, nothing.

7 ARBITRATOR MASUCCI: Thank you very
8 much. I hope you feel better.

9 MR. SPICKER: Thank you. I appreciate
10 it. You all have a good day.

11 (At this time, a brief recess was
12 taken.)

13 ARBITRATOR MASUCCI: I just want to
14 make a comment as to the arbitration awards. It
15 doesn't bind me to make the same decision in
16 this particular case. I could take judicial
17 notice of it, but it doesn't have any
18 precedential value.

19 You're going to have to make an
20 argument as to the relevance of that arbitration
21 award to this case.

22 MR. FREI-PEARSON: Certainly. I'm
23 happy to speak on it further.

24 I wasn't counsel. I wasn't present. I
25 don't know that it's particularly probative. As

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1 your Honor said, it's not binding on your Honor
2 in any way. It is significant as it was related
3 to as -- represented that it was a finding that
4 the drivers were properly classified.

5 Whereas, in fact, my understanding of
6 the word is Arbitrator Feliu felt that control
7 was exercised by Parts Authority, not Diligent,
8 and the driver sued Diligent. Maybe I'm
9 mistaken.

10 MS. STILLER: Parts Authority was not a
11 party to the case. Parts Authority did not
12 participate in that litigation.

13 He could have no holding that could
14 potentially be relevant to this case in relation
15 to Parts Authority.

16 MR. FREI-PEARSON: It's a written
17 decision. We're happy to share it.

18 MS. STILLER: I just think that that's
19 misleading and disingenuous to suggest anything
20 where Parts Authority was not a party to the
21 case.

22 MR. FREI-PEARSON: Are you saying the
23 word Parts Authority doesn't appear in his
24 decision.

25 MS. STILLER: I don't know. I was not

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1 a party. Parts Authority was not a party to
2 that case. Are you suggesting that Parts
3 Authority was a party to the case? You know
4 that they weren't.

5 MR. FREI-PEARSON: I literally said
6 they weren't party to the case.

7 MS. STILLER: Then I don't see how it
8 could potentially be relevant.

9 MR. MARKS: It's a different location.
10 It's a different manager. It's a different set
11 of circumstances. So you brought it up with
12 him. That's why I asked the question. That's
13 all.

14 ARBITRATOR MASUCCI: So housekeeping.
15 Did we admit all of these Joint exhibits?

16 MR. MARKS: No, but we can.

17 MS. STILLER: Actually, my recollection
18 is that we did admit the Joint exhibits, but if
19 we haven't, I don't think there's any issue with
20 admitting the Joint exhibits.

21 ARBITRATOR MASUCCI: Not every exhibit
22 was entered. So the question is in my mind.

23 MR. POTASHNICK: If you call it a Joint
24 Exhibit, it's an automatic. Is that different
25 then how things are done here?

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1 ARBITRATOR MASUCCI: We have to offer
2 them.

3 MR. POTASHNICK: We offer the Joint
4 exhibits.

5 ARBITRATOR MASUCCI: Okay.

6 MR. MARKS: No objection. I think
7 that's the way we proceeded.

8 MS. STILLER: I thought there was a
9 stipulation yesterday, but I could be wrong.

10 ARBITRATOR MASUCCI: That was yesterday
11 morning early, so I wanted to tie it up.

12 First of all, you have an opportunity
13 to make a closing statement.

14 MR. MARKS: I wasn't done.

15 ARBITRATOR MASUCCI: I'm sorry.

16 MR. MARKS: I want to read in portions
17 of Miss Lucio's deposition testimony.

18 ARBITRATOR MASUCCI: Any objection to
19 that? Let's see what portions you're talking
20 about. Are they the portions that you referred
21 to in her testimony?

22 MR. MARKS: Perhaps. I don't recall
23 exactly. If it's duplicative, I apologize, but
24 it's only 10 lines or so.

25 ARBITRATOR MASUCCI: You did not offer

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1 those sections.

2 MR. MARKS: I'm offering them now.

3 ARBITRATOR MASUCCI: Okay.

4 MR. MARKS: I offer sections of the
5 deposition starting with line 71 -- page 71, 9
6 to 10.

7 ARBITRATOR MASUCCI: Since I don't have
8 a copy --

9 MR. MARKS: I will give you one.

10 ARBITRATOR MASUCCI: Do you have a copy
11 of the deposition?

12 (Discussion held off the record.)

13 MS. STILLER: Page 71, lines 9 and 10.

14 ARBITRATOR MASUCCI: Was CJ a Diligent
15 driver, owner/operator?

16 MR. MARKS: Yes. Page 58, lines 5 to
17 10.

18 ARBITRATOR MASUCCI: You said 5 to 10?

19 MR. MARKS: Page 58, lines 5 to 10.

20 ARBITRATOR MASUCCI: When you entered
21 into this agreement with Diligent, you
22 understood that you were doing so as an
23 independent owner/operator similar to the type
24 of relationship you had with ATS; correct?

25 Answer: Yes.

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1 MR. MARKS: Page 105, lines 17 to 22.

2 ARBITRATOR MASUCCI: Paragraph N also
3 states that you only needed to follow Parts
4 Authority instructions. Other than directing
5 you what time to come in, what time to come and
6 giving you a delivery or pickup, did you receive
7 any other instructions from Parts Authority?
8 Answer: No.

9 MR. MARKS: So the record is correct,
10 we were referring to a Statement of Claim, which
11 is a Joint exhibit.

12 ARBITRATOR MASUCCI: Okay.

13 MR. FREI-PEARSON: So claimant's
14 position would be that the entire deposition
15 transcript should come in because it provides
16 contents to these statements, and we actually
17 offered it as a Claimant's exhibit.

18 We have no objection to the entire
19 deposition transcript coming in. If just
20 selected snippets are going to come in, we will
21 want to put in additional selected snippets.

22 MR. MARKS: It's hearsay if they're
23 offering it. There were portions of the
24 deposition testimony that were not relevant.
25 They didn't offer evidence of it in this case,

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1 and it's too late now. They can designate
2 something responsive to clarify that portion. I
3 don't object to that depending on what they try
4 to designate. She testified to this before.
5 Take it. That's not appropriate.

6 ARBITRATOR MASUCCI: Would you identify
7 portions of it that are relevant that you want
8 to offer?

9 MR. FREI-PEARSON: We can't. Could we
10 have a day to do that?

11 MR. MARKS: If they're going to not be
12 here, will I have chance to respond?

13 ARBITRATOR MASUCCI: Yes.

14 MR. MARKS: Okay. With that, I have
15 nothing further.

16 ARBITRATOR MASUCCI: Thank you.

17 MR. POTASHNICK: We may have some
18 rebuttal testimony.

19 MR. FREI-PEARSON: We're trying to
20 figure out the ethics rules on it.

21 ARBITRATOR MASUCCI: Do you want to
22 take 10 minutes to figure that out or 15
23 minutes?

24 MR. FREI-PEARSON: Do you have another
25 witness, or are you done with witnesses?

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1 MR. MARKS: I said I was done for the
2 record.

3 MR. FREI-PEARSON: If we could have a
4 little bit of time. We have people doing
5 research on it now.

6 ARBITRATOR MASUCCI: It's noon. How
7 much time do you need?

8 MR. FREI-PEARSON: We're trying to
9 figure out a legal issue right now as to whether
10 or not an attorney can offer testimony. So 15,
11 20 minutes I would say to get that nailed down.

12 ARBITRATOR MASUCCI: All right. While
13 you're doing that, let's talk about are you
14 prepared to do closing arguments? Do you want
15 to file post-hearing-hearing briefs? I'm not
16 suggesting that's needed. I'm just asking the
17 question.

18 And are we going to get a copy of the
19 record?

20 MR. FREI-PEARSON: So our answer to all
21 of those is whatever is most helpful to your
22 Honor. I would probably prefer to have a
23 record, but if your Honor doesn't want one,
24 that's fine. We're always happy to do
25 post-hearing-hearing briefs.

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1 Again, if it's not helpful, or if
2 there's a targeted issue you want us to address,
3 whatever is most helpful is what we're happy to
4 do.

5 MR. MARKS: I would say that labor has
6 been done, and we should order a transcript, and
7 we should have post-hearing briefs of 10 pages.

8 ARBITRATOR MASUCCI: On which issues
9 that are most relevant? I can tell you what I
10 think.

11 MR. FREI-PEARSON: I think what you
12 think is going to be the most informative for
13 us.

14 ARBITRATOR MASUCCI: Let me articulate
15 it. Let me think about how to articulate so
16 we're going to have the least amount of argument
17 between the parties.

18 How about closing arguments? Part of
19 closing arguments, you can do it on the papers.
20 I just am not crazy about once side giving a
21 closed, and another rebutting and then having a
22 third rebut. I just don't want to go back and
23 forth.

24 MR. MARKS: I don't believe there's
25 really much a question of law. I think we both

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1 agree on what the law is. I think it's how the
2 facts fit the law. We don't have record facts
3 at this point in time. We make assumptions as
4 to what was testified to. I don't see the need
5 for closing arguments if we're going to have the
6 post-hearing brief based on the record.

7 ARBITRATOR MASUCCI: Okay.

8 MR. FREI-PEARSON: That's fine with
9 claimant.

10 ARBITRATOR MASUCCI: And limited to 10
11 pages.

12 MR. FREI-PEARSON: That's more
13 difficult for claimant, but if that's what you
14 prefer, we can do that.

15 ARBITRATOR MASUCCI: I think it will
16 focus everybody. And it's limited to 10 pages.
17 Can be simultaneous?

18 MR. MARKS: Simultaneous is
19 appropriate.

20 ARBITRATOR MASUCCI: When will a record
21 be available? They'll have it on the 28th.

22 MR. MARKS: Target that. If either
23 side needs some more time, I'm happy to discuss
24 that.

25 MR. FREI-PEARSON: We're not going to

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1 jam you up if that's an issue.

2 ARBITRATOR MASUCCI: The best option is
3 for the two of you to agree on any other date
4 and not get me involved in that.

5 MR. POTASHNICK: Would the 18th work?

6 ARBITRATOR MASUCCI: The 18th is
7 President's Day.

8 There is the legal issue of
9 misclassification. But there's been a lot of
10 discrepancy in testimony. So I would like some
11 guidance from you on those discrepancies.

12 ARBITRATOR MASUCCI: Let's take an
13 hour.

14 MS. STILLER: Can I ask a question
15 before we go. If there is an ethical issue
16 involved with your -- whether you will present
17 somebody or not present somebody, then what will
18 wind up happening is whatever that issue is that
19 you're researching, we will probably want to
20 research also.

21 So to the extent that we have some
22 pre-guidance on it if you choose to go ahead
23 with it, I think that would help everybody,
24 otherwise we'll be here again with down time
25 with us taking a look at the issue.

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1 MR. FREI-PEARSON: I'm happy to
2 articulate the issue. While we were researching
3 the case, we learned about nine days ago that
4 Tammie is no longer with Parts Authority, which
5 made us free to contact her. I spoke with her,
6 had a very good conversation, drafted up a
7 declaration based on that conversation that I
8 hoped to submit, sent it to her, and then she
9 ghosted on me, so I never got the signed
10 declaration.

11 She was very nice, very polite, but I
12 don't think she was super interested in talking
13 to a lawyer. I just got her on the phone.

14 Relying on the substance of that
15 communication is something I would very much
16 like to do on Miss Lucio's behalf, and there's
17 contemporaneous written records that I would
18 like to share. I'm not certain -- the reason I
19 bring that up is she said things that -- I don't
20 want to say. But there's reasons I would like
21 to share it, and we're trying to figure out
22 right now if I can be sworn in and give a
23 five-minute recounting of that conversation.

24 MR. MARKS: That's absurd.

25 ARBITRATOR MASUCCI: So number 1, if

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1 you were, your entire firm would have to be
2 disqualified because you're a witness putting
3 your credibility at issue.

4 Number 2, there are, I believe,
5 discovery requests that would have required you
6 to reveal that information 10 days ago when you
7 ostensibly had the information. So to surprise
8 us and to proffer that right now, we will do
9 other research, but there's a lot of issues that
10 I can -- that I envision right now off the top
11 of my head.

12 MR. MARKS: I might also add that the
13 fact that she's no longer employed by Parts
14 Authority does not make her not a representative
15 of Parts Authority for purposes of things she
16 did in the course of business authority, and I
17 think contacting her in that regard was totally
18 inappropriate, and unethical potentially. I
19 don't know where she is.

20 MR. FREI-PEARSON: I don't want to
21 legally debate all of this, because we're trying
22 to figure out the ethics, but certainly I've
23 seen numerous ethics opinions that an
24 ex-employee is fair game to contact.

25 MR. MARKS: That's not correct.

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1 MS. STILLER: No. The New York law
2 depends on the role of the individual and
3 particularly if the individual is in a
4 management role. I don't want to research your
5 issue. So if you think that you are ethnically
6 permitted to proffer that testimony, which
7 should be inadmissible on about 15 grounds, then
8 let us know and we'll get you the case law that
9 says it is ethically improper to contact her
10 without us being notified and being present.

11 Beyond that, we need to go back and
12 take a look at the discovery requests which are
13 ongoing and need to be supplemented.

14 MR. MARKS: It's the rankest of
15 hearsay. I don't know how that could come in.

16 MS. STILLER: It's double. If it's an
17 admission against interest, then she's high
18 level and can't be contacted by you guys. You
19 can't have it both ways.

20 MR. POTASHNICK: They changed most of
21 those laws at least 10 years ago to say that we
22 can contact any former employee.

23 MS. STILLER: That's not true.

24 MR. POTASHNICK: I know it in Missouri,
25 I know it in Illinois, I know it in Georgia.

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1 MS. STILLER: This is New York and he's
2 a member of the New York Bar. It's the New York
3 ethics rule, and I believe it's Rule 1 and Rule
4 3 that will prohibit it.

5 MR. FREI-PEARSON: We researched this
6 issue to ground. I'm very confident that I can
7 have the conversation as to whether or not I can
8 testify about it while I represent Miss Lucio.
9 That's not an issue. We searched around. We
10 didn't really think about it until some things
11 were said that were contrary to that
12 conversation, and we're figuring it out.

13 I also don't think there was any
14 ongoing discovery obligation to produce those
15 notes. But if you can point us to a specific
16 request, we're happy to look at it.

17 ARBITRATOR MASUCCI: I think this is an
18 open issue in that it might clear up
19 discrepancies. Don't look like that.

20 MS. STILLER: I can't help it. It's my
21 look.

22 ARBITRATOR MASUCCI: Discrepancy in
23 testimony. To me the best evidence is to have
24 her here. If she's not here, even trusting what
25 you say, I'm not sure I want to hear it.

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1 MR. FREI-PEARSON: We certainly
2 couldn't get her to testify. She lives in
3 St. Thomas. That was not a thing she was
4 prepared to do.

5 ARBITRATOR MASUCCI: She could have
6 testified by video.

7 MR. FREI-PEARSON: She could have and
8 she declined to do that. I can try again to get
9 the thing signed.

10 ARBITRATOR MASUCCI: But there's no
11 ability to cross-examine it. There's no ability
12 to --

13 MS. STILLER: And you closed your proof
14 already.

15 ARBITRATOR MASUCCI: Could you --

16 MS. STILLER: I'm sorry.

17 ARBITRATOR MASUCCI: I'm just not
18 inclined to allow it.

19 (At this time, a brief recess was
20 taken.)

21 ARBITRATOR MASUCCI: I just want to
22 state for the record that both of you have been
23 vigilant advocates for your side, and you
24 represented your side well, and you acted in
25 good faith.

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1 However the outcome, you did the best
2 you could. So I just wanted to congratulate you
3 on concluding this quicker than I expected today
4 to go, but in a very professional way.

5 MR. MARKS: Thank you.

6 MR. FREI-PEARSON: Thank you.

7 (Time noted: 12:14 p.m.)
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C E R T I F I C A T E

I, Terri Fudens, a Shorthand Reporter
And Notary Public within and for the State of New
York, do hereby certify:

I reported the proceedings in the
Within-entitled matter, and that the within
Transcript is a true record of such proceedings.

I further certify that I am not related
By blood or marriage and that I am in no way
Interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
My hand this 27th day of January, 2019.



TERRI FUDENS
Registration No. 01FU6230430
Notary Public for the State of New York
My commission expires: November 1, 2022

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